

**STATE OF THE CFTC:
EXAMINING PENDING RULES,
CRYPTOCURRENCY REGULATION,
AND CROSS-BORDER AGREEMENTS**

HEARING
BEFORE THE
**COMMITTEE ON AGRICULTURE,
NUTRITION, AND FORESTRY**
UNITED STATES SENATE
ONE HUNDRED FIFTEENTH CONGRESS
SECOND SESSION

—————
FEBRUARY 15, 2018
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Printed for the use of the
Committee on Agriculture, Nutrition, and Forestry



Available via the World Wide Web: <http://www.govinfo.gov/>

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U.S. GOVERNMENT PUBLISHING OFFICE

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Thursday, February 15, 2018

UNITED STATES SENATE,
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m., in room 328A, Russell Senate Office Building, Hon. Pat Roberts, Chairman of the Committee, presiding.

Present or submitting a statement: Senators Roberts, Boozman, Ernst, Grassley, Thune, Daines, Fischer, Stabenow, Brown, Klobuchar, Bennet, Donnelly, Heitkamp, and Smith.

Chairman ROBERTS. Before I call the hearing—well, I will do that officially—I call to order this hearing of the Senate Agriculture, Nutrition, and Forestry Committee—but first I want to welcome Senator Grassley, who is always in the pursuit of justice.

Senator GRASSLEY. I hope what you are offering me is a point of personal privilege to go ahead of everybody else, including the Chairman, so I can get to—

Chairman ROBERTS. I think when you—

Senator GRASSLEY [continuing]. so I can get to the Judiciary Committee to have an important meeting—

Chairman ROBERTS [continuing]. when you threaten the Ranking Member and myself that you were going to investigate me and put us under oath, I thought I would recognize you.

[Laughter.]

Senator GRASSLEY. Okay. Thank you very much.

For the benefit of why he is letting me do this, is because I have to go to the Judiciary Committee to chair, and then we also have immigration on the floor that I am managing, so I appreciate this because I cannot be at this hearing.

So this is a question I am going to want all the members to know I am asking, and Chairman Giancarlo to know that I am asking it. Then when his—he gets a turn to respond to this, then he can respond to it so every member of this Committee can hear it, but I also hope he will back it up and answer it in writing for me.

The purpose of this is to have the CFTC, which has been working with the EPA and overseeing the RINs market, the two agencies signed a memorandum of understanding March 2014, so that pre-dates the Chairman of the CFTC's involvement in it. So he does

not have any involvement in it but he has obviously got some responsibilities now.

So, to Chairman Giancarlo, my question. In March 2016, a memorandum of understanding was signed between EPA and CFTC regarding the market for RINs. RIN stands for renewable identification number and is a mechanism that we use to enforce the renewable fuel standard. The memorandum States, quote, “CFTC review and analysis of the information will assist the EPA in protecting the public and providing advice to EPA on conducting possible investigations into potential fraud, market abuse, and other violations relating to the generation of trading in RINs.”

So my specific question for you to answer later is, how have the CFTC and EPA worked together since signing the memorandum of understanding nearly 2 years ago? Has the CFTC ever analyzed RIN data with the intent of identifying the impact of speculators have on the markets? This issue of speculations on the markets has come up very recently, as several Senators have had disputes over what ought to happen to RINs.

So I thank you for that consideration, and, more importantly, I thank the Chairman and Ranking Member for the courtesy that they just gave me. Thank you very much, Chairman Giancarlo.

Chairman ROBERTS. We thank you, Senator Grassley. That will be submitted for the record and I know Chairman Giancarlo will respond in due haste, and thank you, sir.

STATEMENT OF HON. PAT ROBERTS, U.S. SENATOR FROM THE STATE OF KANSAS, CHAIRMAN, U.S. COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Chairman ROBERTS. I welcome my colleagues, especially the newest additions to the Senate Agriculture Committee, Senator Fischer from Nebraska, Senator Smith from Minnesota. For the benefit of the members I would like to note that Ranking Member Stabenow and I are both pleased to announce that Senator Fischer will be chairing the Subcommittee on Livestock, Marketing, and Agriculture security. Senator Smith is the Ranking Member for the Subcommittee on Rural Development and Energy. We welcome you to the Ag Committee. Thank you.

[Applause.]

Chairman ROBERTS. I welcome today’s witness, Chairman of the Commodity Futures Trading Commission, Chris Giancarlo, as we examine a number of issues with him—the derivative market space, including key end user rules currently pending before the Committee; the status of cross-border equivalency agreements; and determining the proper role of regulators involving the market of crypto-currencies.

Mr. Chairman, I speak for the whole Committee when I say we have been very impressed with your leadership heading up the CFTC since January of last year. While we held a number of confirmation hearings last year for you and your fellow commissioners, it has been almost 3 years since this Committee has held a true oversight hearing examining the CFTC and the markets that you regulate. This hearing is very timely, given that a lot has happened since that time.

This is especially true in the derivatives sector, where commodities like Bitcoin and other crypto-currencies have become a major topic of discussion, not only among large financial institutions on Wall Street but among retail purchasers who are trying to determine what role, if any, crypto-currency should play in their investment decisions.

Because crypto-currency offerings, and the technologies they are built upon, are skyrocketing, regulators like the CFTC are working hard to provide consumer protection, but without stifling further innovations in the market. Furthermore, the technology underlying crypto-currency has transformative potential. Blockchain, or distributed ledger technology, may offer the economy significant benefits as it is used to create more secure, transparent, and efficient ways for recordkeeping. I am pleased to see the CFTC taking such an aggressive and active role in this space.

There was the historic vote by the people of Great Britain to leave the European Union. We are now seeing how the decisions of European officials regarding cross-border financial regulations may upend carefully negotiated agreements that would otherwise provide regulatory certainty to financial stakeholders operating on an international stage.

We also continue to hear from important derivative end users in the agriculture sector and beyond, eagerly awaiting resolution to important rulemakings mandated under the Dodd-Frank Act. We understand you and CFTC staff are working diligently on a number of these issues and we look forward to hearing with regard to your progress.

To that end, Mr. Chairman, I understand without an additional commissioner finalizing some of these important rules is made much more difficult. I think both the Ranking Member and myself would like to see Dawn Stump, who was reported out of the committee last year, confirmed as soon as possible. The hold of her pending nomination is unacceptable and we will move forward on consideration of the additional vacant commissioner spot as soon as an individual is nominated. We need to move forward and get a fully functioning commission.

Whether it is market participants who rely on CFTC to provide regulatory certainty or consumer financial advocates who highlight the need for robust oversight of the market, I think everyone can agree we need a full panel of commissioners at the CFTC.

Again, thank you, Mr. Chairman, for being here today. I look forward to your testimony. I now turn to my colleague, Senator Stabenow, for her opening remarks.

**STATEMENT OF HON. DEBBIE STABENOW, U.S. SENATOR
FROM THE STATE OF MICHIGAN**

Senator STABENOW. Well, thank you very much, Mr. Chairman, and welcome, again, Chairman Giancarlo. It has been good to work with you and I appreciate you being before the Committee.

I also want to join the Chairman in welcoming our new members, Senator Smith and Senator Fischer. We are very, very pleased to have you on the Committee, particularly at this important time when we are coming into our major responsibility as a Committee in writing the 5-year farm bill. So thank you so much.

Many people do not realize the importance of futures and swaps markets to the strength and stability of our economy. I know this Committee does. When a corn or soybean farmer in Saginaw County, Michigan needs protection from damaging swings in commodity market prices, they use the futures markets. When an auto manufacturer in Detroit needs protection against changes in foreign currency in order to export American-made products, they use swaps. Futures and swaps markets support our economy, helping to create American jobs and promote economic stability. We need a strong CFTC to ensure that those markets are fair and transparent and free of fraud and abusive practices.

It has been roughly 10 years since the Great Recession, when the reckless actions of a few led to the pain and suffering of many. Over 8 million jobs were lost. Countless small businesses were shuttered. Farmers and businesses across the country faced foreclosure. Many older Americans were forced to delay their hard-earned retirements, while many younger Americans were unemployed and unable to pursue their piece of the American dream.

We must never allow the devastation of the Great Recession to be repeated. It is critical that we do all we can to ensure that farmers and businesses and families are protected from financial ruin through no fault of their own.

Congress has entrusted the CFTC with tremendous responsibilities—protecting customers, promoting transparency and stability in our markets, monitoring for market abuses and systemic risk, and holding wrongdoers accountable, just to name a few. Since the passage of Dodd-Frank, the CFTC has worked hard to promote strong customer protections. The agency has modernized its surveillance capabilities to better identify market abuses and systemic risks. Its enforcement program has exposed wrongdoing by some of the world's largest financial institutions, while also targeting the crooks and fraudsters who push Ponzi schemes and investment scams in our communities.

As I have said before, there is more work to be done. We must continue to make progress toward a safer financial system, which is why I am concerned that the agency has not yet completed the rulemaking required by Dodd-Frank. Critical rules such as implementing speculative position limits and setting minimum capital requirements for swap dealers remain nonexistent.

I am also interested to learn more about emerging market issues such as the CFTC's approach to automated trading and the tremendous growth of the crypto-currencies like bitcoin.

Finally, we must continue to advocate for the CFTC to have the resources it needs so that it can really do its job. The CFTC's responsibilities have increased dramatically since the Great Recession, without the necessary funding to fully carry out those responsibilities, and, as a result, Americans have been placed at risk, and that is not acceptable.

Chairman Giancarlo, I know you share this concern. I am committed to advocating for a fully funded CFTC and I urge my colleagues to join me in supporting this critical need. Our nation's farmers, ranchers, Main Street businesses, and consumers all depend on fair and transparent derivatives markets, and they need the security and protection provided by strong CFTC oversight.

Today I look forward to hearing more about how the CFTC will continue to strengthen its efforts to safeguard our markets, minimize systemic risk, and protect consumers from fraud and abusive practices.

Thank you, Mr. Chairman.

Chairman ROBERTS. I thank the Ranking Member for her comments and I will turn to our witness for today's hearing, Chairman of the Commodity Futures Trading Commission, The Honorable J. Christopher Giancarlo. Welcome back, Mr. Chairman.

You are a familiar face to the Committee, and in the interest of time I am going to skip the lengthy introduction. The value of your extensive prior experience in the private sector and your time as Chairman and as a CFTC Commissioner has been revealed in the way you have been leading the agency. Since taking the helm, you have done a great job advancing your vision of making CFTC a 21st century regulator. We look forward to hearing about the work you have done and your future plans.

Just for the record, what was the level of funding that you requested, that you think you need to do a good job?

Mr. GIANCARLO. \$281.5 million.

Chairman ROBERTS. Then what was the result with regard to the President's budget?

Mr. GIANCARLO. The President's budget has put that number for \$281.5.

Chairman ROBERTS. \$281—

Mr. GIANCARLO [continuing]. point 5.

Chairman ROBERTS. Yes. But not all of it is in funding. There are what we call user fees. Is that correct?

Mr. GIANCARLO. That is correct.

Chairman ROBERTS. What is that number?

Mr. GIANCARLO. \$31.5 million.

Chairman ROBERTS. \$31.5 million, which will be a tax on the farmers and ranchers who use your capabilities and your trust as they try to manage risk. I am not happy with that. I think the Ranking Member joins me. I am not trying to put you on the spot. I just want to let you know that we will consider our budget according to our baseline, hopefully commensurate with your needs. Please proceed.

STATEMENT OF THE HONORABLE J. CHRISTOPHER GIANCARLO, CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION, WASHINGTON, D.C.

Mr. GIANCARLO. Thank you, Chairman Roberts, Ranking Member Stabenow, and distinguished members, and new members of the Committee.

When I appeared before this Committee last summer I stated my priorities for the CFTC—to foster open, competitive, and transparent markets, free from fraud and manipulation, in support of broad-based economic growth that respects the American taxpayer through careful management of agency resources. I pledged that, if confirmed, I would work with each of you in our common purpose of serving the American people and the agricultural producers on which we all rely.

Thank you for this chance to report on our progress. I look forward to your questions on the CFTC's enforcement program, recent budget requests, swap dealer *de minimis*, position limits, swap data reporting, Project KISS, our upcoming ag futures economics conference, and other matters. I also look forward to discussing the complex challenges of virtual currencies, including the CFTC's response and increased staff competency, consumer education, inter-agency cooperation, our exercise of authority, aggressive enforcement, and heightened review of virtual currency futures.

With your permission, I would like to use the next few minutes to talk about American agriculture. The U.S. Census Bureau estimates that there will be another 2 billion people on Earth in the next 20 years. This poses a massive challenge for the global economy and governments and societies worldwide. How will all these people be fed? How can we meet these challenges? American agriculture.

Just as the U.S. has emerged as a self-sufficient producer of energy for global markets, thanks to American ingenuity and entrepreneurship, the U.S. will play a big part in feeding the globe in the decades to come, thanks to the hard work and intelligence of the American farmer and rancher. American agriculture and energy producers will respond to the rising global demand with the support of U.S. derivative markets regulated by the CFTC and overseen by this Committee.

Our futures and swaps markets serve at least two critical roles in feeding and powering the world's growing population. First, they allow markets to resolve imbalances efficiently, by providing reliable price benchmarks set in U.S. dollars. Second, they reduce price volatility of the world's limited resources by removing the economic incentive to hoard physical supplies. They allow America's farmers, ranchers, and energy producers to measure and transfer the risks of production to those willing and able to take that risk, stabilizing earnings, and benefiting all parties, including consumers worldwide who otherwise do not participate in derivative markets.

For these reasons, American agriculture and American commodity futures markets are vital national interests. CFTC-regulated markets are among the world's most robust and the most resilient. Even with extreme volatility, as we saw recently, CFTC-regulated markets were able to successfully take on and manage risk, enabling valuable risk transfer to support and stabilize the broader financial market. That is why I am grateful to you, Chairman Roberts, and Ranking Member Stabenow, for your recent letter supporting the CFTC's approach to the cross-border supervision of major clearinghouses and our current discussions with regulatory counterparts in the European Union.

As you know, in 2016, my predecessor, Tim Massad, painstakingly negotiated an agreement with the EU for how we supervise each other's clearinghouses. That agreement, which I supported as a minority commissioner, is built upon the principle of regulatory deference. We believe that deference supports strong cross-border markets, recognizes our commonalities, and builds upon the strengths of our respective jurisdictions.

The agreement aligns with the mutual pledges of the United States and Europe in the G20 accords to cooperate and avoid market fragmentation, regulatory arbitrage, and protectionism. That is why we continue to seek assurances from the EU that U.S. clearinghouses will not be treated differently than they are now. American markets must continue to be regulated under U.S. law, by American regulators, overseeing by this Committee of Congress.

In closing, with the proper balance of sound policy, American regulatory oversight, and supervisory deference by our overseas regulatory counterparts, U.S. community derivative markets will continue to safely serve the needs of America's farmers, ranchers, and energy producers, enabling them to feed and power the world, not just today but in the generations to come.

Thank you very much. I look forward to your questions.

[The prepared statement of Mr. Giancarlo can be found on page 26 in the appendix.]

Chairman ROBERTS. Chairman, thank you very much for a comprehensive commentary, more especially outlining the challenge that we face in feeding not only ourselves but a troubled and hungry world. Show me a country that cannot feed itself and I will show you chaos, and we have got a lot of that. It would be helpful if we had an aggressive and robust trade policy that anybody could figure out. Thank you for your comments.

Blockchain is mostly discussed in its context as the technology underlying Bitcoin. My understanding is that potential benefits are substantial for multiple industries, from agriculture to financial services to health care and so on. Notably, a few weeks ago, there was news of major efficiencies shown in the sale of approximately 60,000 tons of soybeans, using blockchain. As this technology and its transformative potential continues to emerge, what role, if any, should regulators play in this beginning stage?

Mr. GIANCARLO. Thank you, Senator. Blockchain, we have seen it expanded dramatically in not only the instance you mentioned but I know a number of other American agriculture merchants are now adopting it. We are even seeing the rail transportation system adopting blockchain techniques.

The potential of this technology is truly transformative. Now, what it will take to realize it, and how it will be realized, and how long it will take, those are open questions. The more I read about it, the more I see that the impacts that it can have on so many of the traditional systems that we utilize, whether in finance, whether in logistics, whether in transportation, are extraordinary.

It presents tremendous challenges for regulators. The concept behind it is the decentralization of information and the bypassing of central authorities that, for centuries, societies used to verify information. If you think about it, from a regulator's point of view, we, ourselves, rely on verifiers, whether they be exchanges or whether they be data repositories, and the traditional mode of regulation is to license those verifiers to play a role in our regulatory framework.

So it presents tremendous challenges for us in our traditional ways of regulating, which brings me to the point, Chairman, it is so important for us to stay ahead of these transformations. If we fall behind, we could find a real disruptive impact on our traditional mode of regulation.

Chairman ROBERTS. I appreciate that. I am going to get parochial here. One of the biggest issues in the derivatives space I hear about from farmers in Kansas, and elsewhere, concerns the lack of convergence. In the past Kansas City Hard Red Winter Wheat futures contracts, while time will tell, support of the change to a variable storage rate looks, at least, somewhat promising.

What update can you provide on outreach the CFTC has done with producers and exchanges regarding this issue?

Mr. GIANCARLO. We focused very carefully on this issue, in hard red winter wheat and, actually, a number of other ag products. Just this week, my staff had meetings with the exchange and with the National Grain and Feed Association, as well, to talk about this issue and understand some of the dimensions of it.

I will tell you that the upcoming contract—I believe it is the March contract—is one of the most used contracts, and the information that will come out of that is one we are going to be looking at very carefully, to determine whether we have got a broader problem or just an anticipated problem. I can assure you, Chairman, we are watching this very carefully.

Chairman ROBERTS. Just for the record, I think we have too much wheat on the ground and not enough of a demand situation with regards to our trade policy.

Mr. Chairman, you touch on the issue of cross-border agreements in the letter that the distinguished Ranking Member and I sent you in January. I ask unanimous consent this letter be submitted for the record, without objection.

[The following information can be found on page 54 in the appendix.]

Chairman ROBERTS. I understand you will be meeting next week with a number of your counterparts in Europe. Can you give us just a preview or a sense of where current discussions are going on the issue of clearinghouse supervision and other equivalency agreements entered into between your agency and the European regulator?

Mr. GIANCARLO. Yes. Thank you, Senator, and thank you for that letter. For our European counterparts to know of the resolve of this Committee and your support for our position is extremely helpful.

The message I have been giving to them, and the message I will be giving them in the next meeting is the same one that I said in my opening statement, which is that American markets must continue to be regulated under U.S. law, by American regulators, overseen by this Committee of Congress. That is the position I have stated from the beginning and that will be the position I will maintain throughout the negotiations.

Chairman ROBERTS. I truly appreciate your comments. Thank you for your responses. I appreciate your insights on all these topics. I do have additional questions for you but in the interest of time I will submit them for the record. I look forward to your responses.

I now turn to Senator Stabenow for her questions.

Senator STABENOW. Thank you, Mr. Chairman, and again, thank you, Chairman.

I wanted to follow up. The Chairman was talking about the letter we had written to you, regarding, of course, bitcoin futures. I am

wondering, as we look at protecting customers and market participants, what more needs to be done at this point?

Mr. GIANCARLO. Senator, it is such a fast-moving area that I think it is critical that we be learning, watching, and understanding every step of the way. We had a 4-hour meeting yesterday of our technology advisory committee at the CFTC, and we had some of the leading experts in this area in, educating us.

As you know, we have also started something at the CFTC called LabCFTC, which is our outreach into these technological developments, to understand their innovations. The first step is a thorough understanding of this emerging technology and how it works.

Senator STABENOW. One of the things you mentioned in your testimony was the shortcomings in oversight at this point in time, and that there are gaps in protections for traders and investors in the markets. So, that is worrisome and I am wondering how quickly something can happen. These markets are going to continue to grow and they have to be made safer for investors and the broader financial system.

So, you know, I appreciate the approach you are taking but how soon will we see something definitive happening?

Mr. GIANCARLO. Well, so, as you know, in our budget request we do request additional funds for additional examiners, and that is very important.

I am pleased to tell you, Senator, that since the launch of the new bitcoin futures product, since its launch there has not been a single margin breach, even during the heightened volatility that we saw over the last few weeks. So that product is operating in a completely lit environment, a transparent environment.

We are monitoring—unlike bitcoin cash market, which we do not regulate, we do not have oversight authority over, we have enforcement authority but not oversight authority—in bitcoin futures, which we do regulate, and we see all the transactions, identified. It is not an anonymous market. It is a disclosed market. It is a thoroughly regulated market. It is a market of mostly institutional and high net worth. It is not a primarily retail market, as is the underlying market. So we are confident that the regulatory systems we have put in place over decades will serve well in this new futures market.

The underlying market, as I have disclosed in my written statement, is a—it is not a supervised market, and that is a policy choice that I think we are all going to have to face in the months and the years to come.

Senator STABENOW. Mr. Chairman, you have talked about adequate funding, and it is something I have talked about for a long time. I am glad to see the movement in the budget. We have to figure that out. You are talking about oversight—the CFTC's oversight. Could you talk, in general, about what you have done to strengthen the CFTC's oversight program? You talk about needing more staff to do this new piece. How much has this been a problem, in terms of providing accountability and oversight, with not having the staff that is needed to be able to do that?

Mr. GIANCARLO. Thank you, Senator. I would never let our oversight capability suffer any deterioration in its effectiveness. There are other needs that perhaps we might triage again, perhaps some

training, some publications. We long had a library at the CFTC. I mean, there are areas where we can move.

When it comes to oversight, we maintain cops on the beat. One of the structural changes I have made since becoming Chairman was to move our surveillance branch into our enforcement branch, so that the lag between detecting wrongdoing and acting on wrongdoing is immediate and not delayed by any type of interagency delay.

So I feel that our effectiveness in rooting out fraud and manipulation is as strong as it has ever been, but we do have needs elsewhere. You know, we have suffered losses in our economics unit, our Office of Chief Economist, which we need to beef up. There are other areas. When it comes to fraud and manipulation, we are as strong—we are covering the waterfronts without any gaps.

Senator STABENOW. Thank you. Finally, you have recently announced Reg Reform 2.0.

Mr. GIANCARLO. Yes.

Senator STABENOW. Based on the fact that there are several critical rulemakings not yet done from Reg Reform 1.0, when will you complete the unfinished business, and will you commit to not weakening any of the safeguards that have been built in since the financial crisis?

Mr. GIANCARLO. Yes. If I can take the last question first, I can pledge to you I do not intend to weaken the safeguards built in. I am supporter of the core reforms of Title VII of the Dodd-Frank Act. I always have been and remain today.

The two unfinished rules you mentioned in your opening remarks, the di minimis and position limits, I said to you, when I met with this Committee last June, that we would get both of those done, and in the fall, I said we would get the di minimis done in the first half of this year. I intend to put that in front. In fact, meetings are now scheduled with my fellow commissioners to present them with data through the end of 2017. So they will have the most up-to-date data, and those conversations will take place over the next several months.

On position limits, I also pledged to you to move forward with that. We are moving forward with that. We will have something to present to the commissioners, I think, by the beginning of the second half of this year. The staff is working on it now. Now with position limits, as you know, that is a complicated rulemaking, but I think we can get this done. I do think it is something that does require a full commission. I think that for position limits to be a lasting rulemaking it should be considered by a commission of five, as intended.

So we will not stop working on something, but I hope that a final rule can be voted on by five commissioners, not by three.

Senator STABENOW. Thank you. Thank you, Mr. Chairman.

Senator BOOZMAN.

[Presiding.] Thank you, and thank you, Mr. Chairman, for being here. We do appreciate all of your hard work, and your insight today as we, really delve into some important issues.

One thing I would like to say, before I get into my questioning, is that I very much oppose the question of user fees. I opposed it in 2016. I think that if we go down that path then we would likely

reduce liquidity, have increased volatility, and less efficient use of our futures markets.

I know that you know the issues of funding, so that you can do what we ask you to do, is so important. As a member of the Appropriations Committee, and I think I can speak for the Appropriations Committee, we are working hard now, as we get into trying to finish out Fiscal Year 2018, and then also starting 2019, to try and address that.

We have talked a lot about, in the past, cybersecurity, and I would like for you to comment on that. It seems like our agencies now because we can do it, we can gather all of this information, but as we essentially centralize it, comes the responsibility of protecting it. Can you tell us what you are doing in that regard?

Mr. GIANCARLO. Absolutely, Senator, and thank you for that question. I am delighted you asked me this because it is one that I have been focused on since I have joined the commission. I spoke—in 2015, I was honored to be asked to go to Harvard Law School and speak on 21st century challenges, and I said the No. 1 challenge to America's global financial markets is cyber, and I remain as convinced of that in 2018 as I was in 2015.

Since becoming Chairman of the agency I have done a number of things. I now meet, once a month, in a scheduled meeting, with our chief cyber officer, and at that meeting he presents me with a full rundown of everything we have seen on the cyber front over the past month. I cannot disclose all of that to you but I have previously said that we receive close to 10,000 cyber attempts per month. So to give you an idea of the relentless threat that we face, and I know a number of the key institutions that we oversee face even higher numbers, such as our exchanges and others. So this threat is serious.

I am satisfied, from those meetings, that, as an agency, we are compliant with the key Federal regulations under FISMA, the Federal Information Security Modernization Act, the National Institute of Standards of Technology, NIST standards, and annual OIG audits.

We have done more than that. One of the things we have started at the commission, that has never been done before, we now do full agency-wide cyber drills. A few weeks ago, we just did our second drill under my chairmanship, full agency-wide, all four offices, where we did a simulated attack on the infrastructure that we oversee, to see how we react to that. Because there is an old adage in the military service, that I think the Chairman may be familiar with, and that is you fight as you drill. So I have told the staff, we are going to drill repeatedly so we will know how to fight when the cyberattack comes. We are also asking the entities that we regulate to have similar protocols in place as well.

Now one of the areas that we are asking for additional funding for is for is in our ability to examine the cyber readiness of the entities that we oversee, and the exchanges. We can use more resources to examine their cyber preparedness.

Senator BOOZMAN. Very good. I appreciate you coming out so strongly to protect the agreements with the EU commission that we worked in the past. Can you give us an example of what would happen if those were weakened significantly?

Mr. GIANCARLO. Yes. We are very concerned that the EU may have in mind the ability and the right to do unscheduled, independent examinations of our clearinghouses, to show up on their doorstep and to go in and conduct exams, to conduct test procedures, to require European standards and European practice on how our clearinghouses operate. I know of no other area where an overseas regulator can come into a U.S.-regulated environment and conduct their own independent exam, or even if they propose to do it in conjunction with us, that is not our legal structure. We are a sovereign nation. We are an independent agency. We report to this Committee and a committee in the House. We do not report to overseas regulators. The dimensions of what could come out of this proposed European legislation, I think are quite breathtaking.

Now, what we are told is that we are maybe getting ahead of ourselves, that we need to wait and see what this all means. Well, I have never been one to much wait. I think that we need to make clear to Europe right now that we have been regulating our clearinghouses for decades. We have gotten it right. None of them failed during the financial crisis. You know, we can always improve, but, quite frankly, to be told that we will have to jointly work with an overseas regulator is something that is unprecedented.

Senator BOOZMAN. Well, thank you, and again, I think we have complete agreement on that issue.

Thank you, Mr. Chairman.

Chairman ROBERTS.

[Presiding.] Senator Smith.

Senator SMITH: Thank you very much, Chair Roberts, and Ranking Member Stabenow.

I would like to just start by telling you how excited I am to serve on this Committee and represent Minnesota farmers and also Minnesota forest products organizations with my colleague, Senator Klobuchar. I am really honored to be the Ranking Member on the Rural Development and Energy Subcommittee. So I look forward to working with Senator Ernst on those rural priorities and to work hard for Minnesota priorities on the farm bill. I am excited, also, really respect the spirit of bipartisanship that has been a hallmark of this Committee, and I look forward to working with all of you. So thanks very much.

Chairman Giancarlo, I wanted to talk with you a little bit about the swaps market. So, like many Americans, Minnesotans certainly suffered deep losses as the result of the 2008 financial crisis. Lots, as Senator Stabenow said, lost their homes, lost their jobs, lost their savings, and one of the contributing factors, of course, was this largely unregulated swaps market.

So I think it is so important that we make sure that there is a strong swaps regulator here. I am sure we share that value. So can you just discuss with us a little bit about how the changes that you are working on to existing swaps rules will not increase the risk of another financial crisis.

Mr. GIANCARLO. Thank you for that question, and may I just simply say that, as Senator Klobuchar knows, I have had some very good education in Minnesota agriculture over the last few years. I got to visit the Blue Diamond Dairy Farm, just east of Sauk Centre, in 2016, and I was in Bloomington, just in December,

with the Minnesota Cattlemen's Association. When you meet with folks like that, that are really at the grassroots level of agriculture you understand how important it is that we, back at the agency, get these rules right, so that they do not have to experience what they experienced, once again.

You know, I am rather proud, at the CFTC, when I look around at our fellow derivative market regulators, we are really the only one—and I say this knowing that our European colleagues may be listening—we are the only one that has our full sweep of swaps regulations in place, and the regulations follow Title VII of Dodd-Frank. This agency embraced its role to implement those reforms, and those reforms are in place today, and they are working in place.

Now, that does not mean that every element of them works as well as it should or as intended, which is why the process of regulation is not a one-and-done. It is a constant one to measure, to make sure that they—as markets change, and markets are very organic in their nature, they evolve and they change, and we need to make sure that our rules evolve and change to meet new changes in the marketplace.

Senator SMITH. Thank you. So how do you sort of assess, as you are making these sort of adjustments, tweaking to the rules, how do you assess kind of what impact that might have on the, you know, potential for a future financial crisis?

Mr. GIANCARLO. Well, we stay in constant contact with the market. One of the things that we have done since I have become Chairman is created a new branch within our Division of Market Oversight called Market Intelligence. The goal of this branch is to try to understand—there is a great hockey player named Wayne Gretzky who said he was successful not because he skated to where the puck was but where the puck was going. The goal of Market Intelligence Branch is to see where the puck is going, in terms of market evolution, and to try to make sure that our rules and regulations stay adequate for those changes in the market.

Senator SMITH. Thank you. As a Minnesotan, I am well familiar with the Wayne Gretzky analogy, so I appreciate that very much.

Let me just, in the few minutes—the minute I have left, touch briefly on this question of budgets and user fees and how we might—you know, how we make sure that you have the resources that you need to do the work that you do.

If we do not go to a user fee model on this Committee, and I understand that that—I understand that there is no decisions made about that—could you just sort of explain what impact that might have on your budgets and how you would—you know, what you would do.

Mr. GIANCARLO. Yes. I know that the number we put forward, \$281.5, which is the same number we put last year, is the right number, and that is because I approached it the way I did in business of building of budget. I did not take the number from the prior year and add a percentage to it and say that is our new budget number.

I said, I want to start from zero. This is my first time as a chairman. I made every division present to me what their mission was, what their needs were, what their capabilities were, and where

they were lacking capabilities. We built the number up from zero—it is called zero-based budgeting—and the number we need, I know it, is \$281.5.

Senator SMITH. Thank you, Mr. Chair.

Chairman ROBERTS. Thank you, Senator Smith. Again, just for the record, I view user fees as a tax on the farmers, ranchers, and growers, and all of the people that depend upon you to make sure that their risk management strategy is protected.

Senator KLOBUCHAR.

Senator KLOBUCHAR. Well, thank you very much, and thank you very much, Mr. Chairman. We will forgive you, Senator Smith and I, for using an example of a hockey player that was not from the Wild or from the old North Stars, but that is okay.

We do want to thank you for visiting our State, both in Stearns County and then the recent visit with our Cattlemen. We really appreciate that. One of the things you and I have talked about in the past is how commercial end users who base their derivative trades in the actual physical products that they produce or use is one group, and then you have financial institutions who base their derivative trades on fluctuations in prices—and you all know this—or the index, different types of companies.

Just based on your visits to Minnesota and other places around the country, how has that helped inform you as you look at those different types of situations?

Mr. GIANCARLO. I am a firm believer that in so many walks of life that diversity adds value to the marketplace, and I think that is especially true in financial markets. I think the broader range of market participants, from big to small, from what some call naturals, all the way to speculators—not excessive speculators but speculators—add depth and value to a market.

When I meet with end users, agricultural and energy producers, and understand their concerns, I see how critically important it is that we make sure that they continue to be comfortable operating in these markets, alongside some of these commercial, some of these proprietary traders as well. What we need to do, at the agency, is always try to find—make sure there is an environment where all can participate. That will provide us the greatest depth.

Senator KLOBUCHAR. Thank you very much. I know that Chairman Grassley—oh, no, former Chairman of the Judiciary Committee Grassley, excuse me—asked you about the issue of RIN data. As you know, the RFS is critically important, and I have been working on that for a long time. The CFTC's willingness to work with the EPA to combat fraud in the creation and sales of RINs is important as we work to sustain confidence in the market-based regulatory system.

Based on your experience, do you believe that current information in trading data in RINs markets would increase transparency?

Mr. GIANCARLO. What I can tell you, Senator, is we were asked by EPA to look at certain physical market data, which we did. We do oversee, as a regulator, trading in the RINs futures contract. Unfortunately, there is virtually no trading in that contract. I mean, I think one or two trades. That is how little activity is there, and we monitor that but there is virtually no activity.

In the underlying market—we are not the regulator of the underlying market but at the request of EPA we did review data and we gave them results. Based upon the data, we were not able to find any misbehavior in the market. The data was both limited and not of sufficient quality, and we are a data-driven agency, and analyzing bad data, you do not necessarily get good results, unfortunately, and we had a conversation about that.

I recently spoke with Ag Secretary Perdue about this market, and shared these thoughts with him, and we have agreed that we are going to put our best economists on taking a look at this, and they are going to be meeting in the next few weeks. So there are opportunities for engagement here and we will have that engagement and we will see what comes out of it.

Senator KLOBUCHAR. Okay. Thank you. Last, as you know from your visit, the livelihood ranchers in Minnesota depends on the prices that they receive for their cattle, the cost to raise them. Can you talk about how the CFTC documents transaction data within cattle markets and cattle future markets, help to determine what is irregular, what is regular with the fluctuations, and during the CFTC's collaboration with GAO, were there any initial findings about the cattle markets that you can share with our Committee today.

Mr. GIANCARLO. So, you know, the cattle contract has been a concern of mine for some time. It became quite clear, over the last few years, that there were some convergence issues in that contract and other problems. We communicated with the CME, which operates that contract, our concerns, and to their credit took a number of steps to restructure that contract and improve that contract.

Now we continue to watch it to see how these improvements are working—as of last year it looked like they were addressing a number of concerns of the cattlemen. It was one of the very subjects I spoke to Minnesota Cattlemen about when I was up there. How is it working? Are these changes making—having an impact?

There still may be a number of issues there. What I would say broadly is one of the things I have learned, as Chairman, is that it is vitally important for the agency to keep an eye on how contracts, especially in the ag market, are working, and to let those that operate the contracts at the exchanges know that their responsibility is to keep these contracts fresh, updated. Sometimes contracts are not even updated for a long period of time, many, many years, and that needs to be done frequently. These contracts need to be looked at, because they need to serve our ag users.

Senator KLOBUCHAR. Thank you very much.

Chairman ROBERTS. Well, Coop, it is 10:17, maybe :16. It is not high noon yet. Did you get all the critters rounded up? You are recognized here.

Senator THUNE. Terrific. Well, thank you, Mr. Chairman. I appreciate you and Senator Stabenow having the hearing today and I want to thank Chairman Giancarlo for appearing before the Committee.

I appreciate the CFTC's efforts to bring transparency and integrity to crypto-currencies. I understand that the CFTC does not have the authority to conduct regulatory oversight on virtual cur-

rency platforms, but that it is working with a number of agencies on multi-regulatory approach for crypto-currency oversight.

What are your thoughts on the current multi-agency approach and what is the most effective way, would you say, to regulate crypto-currency?

Mr. GIANCARLO. Thank you, Senator. It is tremendously challenging. Bitcoin or other virtual currencies is a legally traded product, and yet there is no Federal agency with direct regulatory oversight over those spot markets. What I mean by that is the ability to set standards, to determine capital adequacy, best practices, how they deal with customers, what are their cyber protections, what are their security protections. There is no Federal agency that sets those standards. We do not have the jurisdiction to do it, as we do not in any spot cash market.

What we do have is enforcement authority for fraud manipulation to the extent we are able to see it. As I explained to Senator Klobuchar, we are a data-driven agency, so having that data, or the lack of that data is very important.

With our new bitcoin futures products we entered into unprecedented arrangements with those two exchanges offering those products, to gather data from the five bitcoin spot markets so that we can now start analyzing. So for the first time, as a Federal agency, we can see data, at least in a limited number of cases, in spot markets, so we can police them for fraud manipulation.

Senator THUNE. Do you think you need to have more regulatory authority and resources to bring greater transparency and integrity to those platforms?

Mr. GIANCARLO. I think if it is the policy choice that those platforms need direct supervision, then some agency will need the resources to do it. We are not an agency that traditionally supervises spot platforms, so it would be more than a question of resources. It would mean a change of our mission, of our mandate, of our approach. So it would be a very significant change for us across the board, were we to take that on.

Chairman Clayton and I thought, our first step should be to just make sure the policymakers are aware that this is an unregulated environment. It is a legal environment but it is an unregulated environment.

Senator THUNE. Let me shift gears real quickly. In March 2016, CFTC and EPA signed an MOU related to RIN markets. The purpose of the MOU was, in part, to permit sharing of confidential information, business information I should say, on the RIN market so that the CFTC could advise EPA on, and I quote “techniques that could be employed to minimize fraud, market abuses, or other violations and to conduct appropriate oversight in RIN and renewable fuel markets.”

Have you given EPA any advice, and if so, what was it?

Mr. GIANCARLO. Our advice is that the data that they are collecting is—you know, there is an old saying in technology and software, you know, garbage in, garbage out. If the data is not terribly good, it is awfully hard to make heads or tails of it, and one of the problems we had in analyzing the data was that it was not really adequate to tell us—what they were hoping that we could tell them which was the presence of manipulation.

Senator THUNE. So more and better data would help.

Mr. GIANCARLO. Absolutely.

Senator THUNE. Okay. We hope that you are a part of providing advice on that subject. Obviously, as you know, there is a lot of controversy and a lot of discussion around it.

Mr. Chairman, thank you, sir.

Chairman ROBERTS. I appreciate it, Senator. Let us see. We have Senator Brown.

Senator BROWN. Mr. Chairman, I share the concern of a number of my colleagues. I know the Chairman has mentioned this, Senator Smith mentioned it, about your budget, about the fees. I particularly share the concern, I know—I mean, I know you say you have enough, but I also know this agency has been shorted in too many cases, and as you testified in the Banking Committee last week, Mr. Chairman, about the demands created by the emergence of virtual currencies, bitcoin and related derivatives, that I am even more concerned about your budget. So I hope that you will kind of relook at this, reflecting the bipartisan concern here about your ability to do some of the things that we think you need to do.

Just a statement. You do not need to respond to that.

I know that CFTC has recently announced some high-profile enforcement cases on market manipulation and virtual currencies. I am concerned, though, that the overall trend shows a decline in enforcement actions and penalties. Fiscal year 2017 showed a significant decline from prior year levels. Democrats, especially, on Banking and on this Committee are concerned that some of the new Trump regulators are a bit too close to the industry, shall we say.

So explain, in that context, why we—sir, reassure us why the downward trend in the enforcement data is not a bad thing. It seems like a deliberate pullback in enforcement.

Mr. GIANCARLO. So, Senator, you can understand, I became Chairman in the middle of Fiscal Year 2017, and that year really reflects the enforcement priorities of my predecessor, not me, because enforcement actions take time to generate.

Also the Wall Street Journal article which, looked at that, compared years where the CFTC had some extraordinarily large awards against a few large banks, in the hundreds of millions of dollars. So on those two points, a better trajectory is to look at just recent activities. Just in the last month alone, we have brought \$100 million worth of settlements against Wall Street banks, just in January alone.

I think you will see, going forward, an enforcement agenda that reflects more of my priorities as opposed to perhaps my predecessor's priorities.

In terms of—and I think if you—

Senator BROWN. Are some of those penalties against repeat offenders?

Mr. GIANCARLO. In the—repeat offenders meaning banks that have been fined or—

Senator BROWN. Yes.

Mr. GIANCARLO. Yes.

Senator BROWN. Okay. I am concerned about—I mean, you do not represent SEC. I understand that. I know that you, your agency, and, I think you have—you have continued this—when move on

an action you send a press release, which is helpful, I think, in sending that message. SEC does not always do that. So do you believe that publicizing those major actions tends to have a dampening effect on cheaters, on people going too far? Is that sort of your purpose, and comment on that.

Mr. GIANCARLO. Absolutely, Senator Brown. You know, one of the criticisms that has been aired is the lack of criminal activity. Now we do not have criminal enforcement activity, but under my watch we just completed a very successful joint action with the Department of Justice and the FBI in which we brought criminal charges against a number of those, at some of these Wall Street banks, that were manipulating markets, over the last few weeks.

So I do believe that not only do press releases help but also the actions that an agency is willing to take to work across the aisle with other agencies to not only bring civil charges but also criminal charges, sends a message that we are serious about enforcing the laws.

Senator BROWN. Would it help you if SEC would be—is visibly troubled, if SEC would send out the same kinds of releases you do, to send the message you send, that you think is important to send? Would it be helpful if they would also do that?

Mr. GIANCARLO. I have to say, Senator, I am not familiar enough with their practice to form a judgment as to its adequacy. I know that we work hard to make sure that our press releases send out the message that we are trying to send, that we are serious about enforcement.

Senator BROWN. I guess I would close, Mr. Chairman, by asking that—I mean, I know that you and the SEC, you have sat together in committee the other day, I know that you seem to have a warm relationship. I would hope that you could use—I know that you run this agency, he runs that agency, but I would ask that you make clear to him, at some point, that you think it is really helpful that you send those releases out and use that to discourage bad behavior in those whom you regulate.

Mr. GIANCARLO. Thank you, Senator.

Chairman ROBERTS. I thank the Senator. I think the message the Chairman is trying to send out, there is a new sheriff in town. Senator Heitkamp.

Senator HEITKAMP. Thank you, Mr. Chairman.

Just to highlight, maybe, some of the macro issues that we are confronting. A farmer, just a couple of minutes ago, gave me this. This is U.S. farm income, 2013, \$124 billion. U.S. farm income, 2018, \$70 billion. Farm income has been cut in half, driven by low commodity prices, driven by disruption in trade, which I know the Chairman is very active on, and we need to continue to be active. But, also, I think there is a growing challenge that we have in trying to figure out how we can expand markets. That is why the RIN question keeps coming up. That is why we keep talking about kind of your role in all of this.

The last thing that we can afford is a distorted or unproductive market, and for a lot of the commodities that are grown in my State, the work that you do is absolutely critical, and so preventing fraud, preventing manipulation, and seeing market trends is absolutely critical. So, you know, we can talk about all the other issues,

crypto-currencies, but I think we need to stay razor-like focused on how critical commodity prices are to making a living on the farm.

You know, we do not want to—in farm country in my State we want to grow crops, we want to market those crops, and we want to make a living, and, you know, the ability to access the market is critical, which takes me back to a question Senator Klobuchar asked, which is about the cattle markets. I want to thank you, Chris, for coming out to North Dakota. We had a great trip where we talked about cattle markets, but we also had an opportunity to talk about oil and oil futures, and understand kind of what that shale play is. I took him to an oil rig, so it was all very exciting—

Mr. GIANCARLO. It was.

Senator HEITKAMP [continuing]. in North Dakota. Your wife is from South Dakota?

Mr. GIANCARLO. No. My wife is from Long Island, New York.

Senator HEITKAMP. Oh, well, that is too bad.

[Laughter.]

Senator HEITKAMP. Well, you said she would have had fun.

Mr. GIANCARLO. She was a 4-H girl and she understood a lot better than I did on some of the farm issues.

Senator HEITKAMP. Okay. So I just have a couple of questions on crypto-currencies. I know—I did not get a chance in Banking to ask you some of these questions, but one of the stories that was recently highlighted in the media is that most of the trading and most of the work that is being done on crypto-currencies, whether it is bitcoin or other currencies, is really going under the tax radar. So that the disruption that may happen in other kinds of participation in markets may transition to a crypto-currency market, because it is, you know, the new hot thing. Also if you think that you can gain 35 percent, 20 percent, whatever your effective tax rate is, by moving over, you know, that has some destabilizing effects, it seems to me.

So can you comment about the tax consequences on crypto-currency and what you think you and the SEC could be doing to highlight that concern? After all, you know, Al Capone even had to pay taxes, so even if we do not think that this is all legitimate and some of it is nefarious, we need to know what it is.

Mr. GIANCARLO. Senator, thank you for that question, and I know that a lot of people in the crypto community may be watching this hearing so this is a very good opportunity to remind them that taxes are due on crypto-currency transactions that may be taxable. So this is not a, you know, off-the-grid from a tax point of view environment. U.S. law still applies, whether it is a crypto-currency transaction or anything else.

Senator HEITKAMP. Typically, tell me what the 1099 consequences are of crypto-currency transactions.

Mr. GIANCARLO. Well, the IRS treats it—I am not an expert in this, but it treats it as an asset, and the depreciation in the value of an asset means that a tax may be due for that appreciation as a capital gain.

Senator HEITKAMP. Yes. But typically, how the IRS would know if I made a trade in the equity markets or in your markets is I would get a 1099, and then there would be accountability.

Mr. GIANCARLO. That is exactly right.

Senator HEITKAMP. So tell me whether you think 1099s are being enforced in the crypto-currency space.

Mr. GIANCARLO. I do not have data to that. My suspicion is not to a great extent.

Senator HEITKAMP. Well, this is a problem, and it is a problem that is going to continue to grow without some early intervention. So, again, another whole incentive to move over as people read that and say, "Hey, if I can get a 20 percent tax-free gain on, you know, a \$10,000 investment, that looks pretty good."

Mr. GIANCARLO. Mm-hmm.

Senator HEITKAMP. So more reason to elevate our concern about this—

Mr. GIANCARLO. Yes.

Senator HEITKAMP [continuing]. because it, in fact, maybe become a choice that people make to move over.

Mr. GIANCARLO. Indeed. Indeed.

Senator HEITKAMP. Okay. Thank you, Mr. Chairman.

Chairman ROBERTS. Senator Boozman.

Senator BOOZMAN. Thank you, Mr. Chairman. I appreciate the shout-out for 4-H. My girls were all State record book winners, and it is truly an excellent program.

I wanted to get you to comment on, I know that you have started, under your leadership, a process of simplifying and modernizing the rules so that they are easier to comply with, not weakening the rules but rather a way to make them less burdensome. Can you update us on Project KISS?

Mr. GIANCARLO. I would be delighted to, and it gives me a chance to clarify any misunderstanding.

Project KISS is not about changing policy. It is a policy-neutral program. It is about simplifying and making our laws and our rules, our rules and regulations less complex, less costly, less burdensome. When you think about it our desire in the market is to bring more market participants in. When rules are complicated it is real easy for the big players to hire the lawyers necessary to go through complicated rules, but it is harder for small firms. The simpler we can make our rules, with the same policy implications, then the more accessible our markets are for small and medium-sized firms, which, as we know, are the engines of growth and job creation in this country.

So we, just this morning, announced one of the elements of our Project KISS initiative. Now our rules—our laws were first written in 1937, in a number of cases, and some of our provisions go back. One of the provisions is that all the defined terms are alphabetized, and after you get to Z you start over again. So you go from Z to AA, and then you go to AA to ZZ, then you go to AAA. Well, we have gotten up to quadruple-Z in our definition system, and that runs then through the whole body of law that you have got to reference back, and it makes for a tremendous mess when you are trying to read these provisions.

So we are getting rid of the alphabetized approach. We are just putting the defined terms in as they are, but it requires us to go back through the whole rule set to redefine it.

This may seem like a lot of nothing, but believe it or not, it simplifies the rule book, and it is just part and parcel of good govern-

ment. Every so often rules need to be simplified so they are more accessible to the small and medium-sized companies that might want to come into our marketplace, and just find the rulebook too daunting. Now it may mean some less billable hours for some Wall Street law firms or Washington law firms, but you know what? It is good for American business.

Senator BOOZMAN. Thank you, Mr. Chairman. It is refreshing to hear that we are trying to simplify things, and, as you say, that is one of the greatest deterrents to people not participating, just simply not understanding something. So thank you very much.

Chairman ROBERTS. Thank you, Senator.

Mr. Chairman, triple-Z?

Mr. GIANCARLO. Quadruple-Z.

Chairman ROBERTS. Quadruple-Z. Better go back to triple-Z. That sounds like a ranch. It is the Triple Z Ranch, or something like that. Well, thank you for trying to clear that up and get rid of that mess.

We are waiting on Senator Daines, who is on the way. Let me just ask a real quick question.

You noted in your testimony, even as I speak—Senator Daines, you are up, if you are ready, and I know you are always ready.

Senator DAINES. Mr. Chairman, thank you, and thanks for testifying in front of the Committee. Good to see you, Mr. Chairman.

Mr. GIANCARLO. Thank you.

Senator DAINES. With the emergence of market volatility last week—I guess it was called the re-emergence; it happens from time to time—it is times like this that emphasize the CFTC's importance to regulating derivatives that allows businesses like farmers, ranchers, and manufacturers to hedge their risks. These instruments lock in their profits, which could otherwise be eroded by either rising input costs or lower sales. It is important that we do get regulations right, including with your regulatory counterparts in the EU, as well as in emergent technologies.

Last September, in Columbia Falls, there was a school district that was hacked. It was allowing overseas hackers to issue death threats to children in the Flathead region, and their preferred method of payment was crypto-currency. It had a chilling effect for many, many families in Montana, particularly those up in the Flathead region.

A few weeks ago we had a Homeland Security Committee meeting on preventing opioid producers from shipping fentanyl into the country. Committee staff directly interfaced by email with the sellers, learning how they actually operated. Their preferred method of payment? Crypto-currency.

Mr. Chairman, could you share your guiding philosophy for how the CFTC balances licenses to innovate with the need to guard against the proliferation of illicit activity?

Mr. GIANCARLO. Thank you for that, Senator. It is sobering and upsetting, especially when we think about the children involved and what we have been through in the last day. It is troubling to know, but we do know that with a lot of these crypto-currencies there is a lot of illicit use. Examples like this give us an indication but we do not know, with hard data, percentage-wise, how much

of it is used for illicit activities, but we do know it is being used in cases for illicit activity.

I met recently with the new head of FinCEN, the financial crimes unit, and they assured me that their anti-money-laundering procedure are in place for all domestic virtual currency trading platforms, which we do not regulate at the CFTC but about which we are concerned. We are broadly concerned about the use of these virtual currencies for activities like this, and yet no Federal regulator has direct authority. That is something that I think, as policy-makers, Congress, but also the regulatory agencies, need to probably put first and foremost on our list of what are the next steps and where we do go next.

I think the industry itself has something to do in this area as well. I know that in the UK now a number of virtual currency platforms are banding together to develop a self-regulatory organization to clean up the industry of this, and I think that is something that they have not been called out on, but to the extent that people who are advocates for virtual currencies are listening, I think they need to know that they have got a responsibility in cleaning up this industry, if they really want it to be something that earns respect and becomes part of not only our future but their future as well.

Senator DAINES. I want to shift gears and talk about blockchain. Both of the chairmen, my Chairman to my right and my Chairman to the left here, were in Montana for our Ag Summit. I thank both of you for coming, Mr. Giancarlo, and thank you for that, Mr. Chairman.

You spoke about Project KISS.

Mr. GIANCARLO. Yes.

Senator DAINES. Keeping It Simple, Stupid—which is in keeping with President Trump's broader regulatory agenda to eliminate outdated and unnecessary regulations. We know that reporting requirements, unregistered market participants poses great overhead costs. I saw that firsthand when I was in the private sector.

Could you share some of your efforts through LabCFTC to pioneer blockchain technology?

Mr. GIANCARLO. Sure. So before you joined us, Senator, I was talking a little bit about Project KISS, and I was saying that one of its goals is to simplify our rules so that small and medium-sized companies can enter. I gave an example of something we announced this morning.

I would like to give another example. One of the things that an agency like ours does is use no-action relief to make adjustments in the rules, and that body of no-action relief appears in letters, but in no formal way that someone new to the market can understand, really, the way our rules work. So another element of Project KISS is to embody all of that—hundreds of no-action letters into actual rulemakings so, again, our rules are easier to understand for new players coming into the market.

LabCFTC is our focal point for how we interact and how we learn about all these new innovations. Fintech is probably the most creative area of technology innovation right now. It is transforming financial markets. We needed to find a way that we could bring in talented people that understand these technologies and open up a window. So with our LabCFTC, we have held office hours in New

York, Chicago, and recently in Silicon Valley, because you cannot sit in Washington and say “innovators, come to us.” You have got to go to them, onto their turf, and understand what they are doing, and have them do demos. So that is what we are doing with LabCFTC.

Senator DAINES. I am out of time, but Chairman Giancarlo, I want to thank you. Your last comment, the fact that you are getting out of this ivory tower of Washington, DC, out to where the action is actually occurring. There is a lot of inaction in this town, and you are out there where the people are. You mentioned New York, you mentioned Chicago, you mentioned Silicon Valley. You also came to Great Falls, Montana, for our Ag Summit, and I appreciate that. Thank you.

Mr. GIANCARLO. Thank you.

Chairman ROBERTS. Senator Daines, thank you very much for some very pertinent questions.

That will conclude our hearing today. To the Chairman, thank you for sharing your views on these important topics. You have given this Committee much to think about as we continue to look forward to the CFTC reauthorization and that challenge.

To my fellow members, we would ask that any additional questions you may have for the record be submitted to the Committee clerk five business days from today, or by 5 p.m. next Friday, February the 23d.

The Committee is adjourned.

[Whereupon, at 10:47 a.m., the Committee was adjourned.]

A P P E N D I X

FEBRUARY 15, 2018

**WRITTEN TESTIMONY OF
J. CHRISTOPHER GIANCARLO
CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION
BEFORE THE
U.S. SENATE AGRICULTURE, NUTRITION, AND FORESTRY COMMITTEE
WASHINGTON, D.C.
FEBRUARY 15, 2018**

INTRODUCTION

Thank you, Chairman Roberts, Ranking Member Stabenow, and distinguished members of the Committee for this opportunity to discuss the work of the Commodity Futures Trading Commission (CFTC).

When I appeared before this Committee last summer, we discussed the importance of derivatives for the American farmer, rancher, and manufacturer. I outlined for you my priorities for the CFTC: to carry out the CFTC's mission to foster open, transparent, competitive and financially sound markets, free from fraud and manipulation, in a way that best fosters broad-based economic growth and prosperity while respecting the American taxpayer through careful management of our agency resources. I pledged that, if confirmed, I would focus on these priorities, avoid partisanship at the agency and work with each of you, with candor and promptness, in our common purpose of serving the American people and the agricultural producers upon which we all rely.

Summer has gone. We are now amidst a world changing in front of us. There have been regulatory developments in Europe and elsewhere that demand our attention. And there is much work and activity at the Commission on which to report, including the new phenomenon of virtual currencies. I, therefore, thank you again for this opportunity to testify.

CROSS BORDER AGREEMENTS

I am grateful to you, Chairman Roberts and Ranking Member Stabenow, for your recent letter expressing strong support of the CFTC, both in its approach to the cross-border supervision of major clearinghouses and its current discussions with regulatory counterparts in the European Union (EU). Your letter confirms the critical importance of keeping in place the 2016 equivalence agreement for derivatives clearinghouse supervision by the CFTC and the EU authorities. Regulatory and supervisory deference needs to remain the key principle underpinning cross border supervision of Central Counterparties (CCPs). Deference continues to be the right approach to ensure that oversight over these global markets is effective and robust without fragmenting markets and trading activity.

CFTC-regulated CCPs are among the most robust and resilient in the world. Even in the face of extreme volatility, as we saw both recently and following the 2017 Brexit decision, CFTC-regulated CCPs have been able to successfully take on and manage risk,

enabling valuable price risk transfer to support and stabilize the broader financial market. On the CFTC's watch not a single CFTC-regulated CCP has ever defaulted or even come close to using its mutualized default resources to cover market losses. This is a testament to the strength of the CFTC's existing regulatory and supervisory framework. In fact, since the financial crisis of 2008, the total initial margin for cleared futures and swaps held by CFTC-regulated CCPs has more than tripled to over \$300 billion.

Of course, today's markets are global. As 21st Century market regulators, we must work cooperatively across jurisdictions in order to promote growth and innovation while supporting the financial stability of our global markets. It was in this spirit that the CFTC carefully negotiated a cross border agreement in 2016 with the European Union to defer to each other on CCP oversight.

The 2016 equivalence agreement was no small accomplishment. Former Chairman Tim Massad deserves considerable credit for his fortitude and determination. The agreement was hard negotiated and took three years to accomplish. The CFTC made considerable concessions. The final agreement was approved by the European Commission and reviewed by all 28 EU member states.

The 2016 equivalence agreement is built upon the principle of regulatory and supervisory deference. It is straightforward: on one hand, through substituted compliance, the CFTC allows European CCPs to follow most of the EU CCP regime to demonstrate compliance with U.S. law; and, on the other hand, through equivalence and recognition, European authorities allow U.S. CCPs to follow most of the CFTC CCP regime to demonstrate compliance with EU law.

I supported the 2016 equivalence agreement then,¹ and I support it today. It is an important signal to the markets and the international regulatory community that the United States and Europe can work together to successfully resolve critical cross-border issues. The agreement has contributed to stronger and more productive relations between the CFTC and its European and other overseas regulatory counterparts. Today, the CFTC and the European Securities and Markets Authority (ESMA) are developing a close relationship based on the understanding that we must cooperate in order to tackle regulatory and supervisory challenges that may lie ahead.

Right now, the EU bodies are debating new legislation proposed by the European Commission that would create a new European framework to regulate and supervise CCPs. It goes without saying that, as a sovereign political entity, the European Union has every right to revisit, without foreign interference, how it regulates and supervises CCPs that operate in its jurisdiction. We understand that there is an ongoing political debate in the EU right now about shifting additional power away from member states to pan-

¹ See, Statement of Commissioner J. Christopher Giancarlo on European Union Determination of U.S. Central Counterparty Clearinghouse Equivalence, February 10, 2016
<http://www.cftc.gov/PressRoom/SpeechesTestimony/giancarlostatement021016>

European institutions. We take no sides in that debate. Moreover, we welcome any and all efforts in the EU to enhance the regulation and supervision of its domestic CCPs.

The CFTC is committed to honoring its obligations under the 2016 equivalence agreement. Yet, there are some indications that the European Commission views the UK's decision to exit the EU as a basis to vitiate the agreement. It appears that some EU policymakers want to go back to the negotiating table. There appears to be an expectation that the CFTC should be prepared to renegotiate many of the same issues covered by the existing agreement, but with new people and new authorities.

The United States will not be put into this position. We honor our commitments and expect others to do the same. The CFTC negotiated the 2016 equivalence agreement in good faith. A deal is a deal.

While we appreciate the EU's need to address the ramifications of Brexit, the U.S. and its markets must not be its collateral damage. Other than Brexit, little has changed to justify changing the current approach to cross border CCP supervision. It remains true today, as it did two years ago, that with respect to our systemically important clearinghouses, the majority of their members are U.S. domiciled and the majority of their business comes from the U.S. In fact, for one of these clearinghouses, their European-based clearing business accounts for less than fifteen percent of their overall business. This has been true since 2016. There has been no significant change in the European risk profile of U.S. CCPs to justify increasing their regulatory and supervisory burdens.

When it comes to U.S. CCPs, we insist that the parties stay true to the terms of the 2016 equivalence agreement, give proper assurances that U.S. CCPs will not be treated differently than they are now, and pledge support for deference as the governing principle for how we regulate and supervise each other's CCPs today and in the future. In fact, deference is the cornerstone for how the CFTC approaches the cross-border supervision of *European* CCPs. It is deference that supports strong cross-border markets, recognizes our commonalities, and builds upon the strengths of our respective jurisdictions.

To this end, I continue to press upon my European counterparts that the proposed legislation must preserve the tenants of our 2016 equivalence agreement. Since its execution, the agreement has been effective in allowing market participants in both jurisdictions – the U.S. and the EU – to hedge their risks in efficient and resilient markets. The agreement is very much in accord with the mutual pledges of the U.S. and Europe in the G-20 accords to cooperate actively to avoid market fragmentation, regulatory arbitrage, and market protection in these global derivatives markets.

Cross-border supervision of systemically important CCPs is far too important for piecemeal and contradictory rule-making. The proposed new EU approach would subject U.S. CCPs to new regulation and duplicative supervision. It would require the wholesale adoption by U.S. CCPs of many new and unproven European regulations. These burdens will increase the cost of clearing for American businesses that depend on well-regulated futures markets to manage risk in their business operations. This is not

acceptable. American markets must continue to be regulated under American law by U.S. regulators overseen by the U.S. Congress.

Notwithstanding these concerns, there is also hope. Since becoming Chairman of the CFTC, I have made it one of my top priorities to strengthen the CFTC's relations with our European counterparts. I have had numerous meetings with key regulatory counterparts and policymakers from the European Union, France, Germany, and the United Kingdom to discuss how to ensure effective regulatory cooperation and coordination between the CFTC and Europe. I have extended my hand in friendship and respect to each and every one of them. I will continue that approach.

I am proud of the fact that the CFTC has successfully negotiated with EU authorities in the past four months: (i) EU equivalence and CFTC exemptions for certain CFTC – and EU – authorized derivative trading venues; (ii) and, equivalence and substituted compliance decisions on margin requirements. Just like the CCP equivalence agreement of 2016, these decisions should be enduring achievements, as they are essential to ensuring a strong and stable trans-Atlantic derivatives market that supports economic growth both in the European Union and the United States.

Following this hearing, I have scheduled more meetings next week with European regulatory counterparts in London, Brussels, Frankfurt and Madrid. I will make clear that regulatory and supervisory deference is the right course for supervision of CCPs by U.S. and EU regulators. It has the support of the Administration. Thank you for making clear that it also has the bipartisan support of this Committee.

We must construct a stronger and more successful trans-Atlantic relationship to ensure that our markets can continue to flourish. Together with our European colleagues, we must strive for a comprehensive and universal approach that supports strong cross-border markets, recognizes and builds upon the strengths of our respective supervisory programs, and preserves the basic tenets of the 2016 equivalence agreement. I trust my European colleagues will do the right thing, preserve our good work of 2016 and embrace, not reject regulatory and supervisory deference.

VIRTUAL CURRENCIES

Let's turn to virtual currencies. Emerging financial technologies are taking us into a new chapter of economic history. They are impacting trading, markets and the entire financial landscape with far ranging implications for capital formation and risk transfer. These emerging technologies include machine learning and artificial intelligence, algorithm-based trading, data analytics, "smart" contracts, and distributed ledger technologies. Over time, these technologies may come to challenge traditional market infrastructure. They are transforming the world around us, and it is no surprise that these technologies are having an equally transformative impact on U.S. capital and derivatives markets.

Supporters of virtual currencies see a technological solution to the age-old “double spend” problem – that has always driven the need for a trusted, central authority to ensure that an entity is capable of, and does, engage in a valid transaction. Traditionally, there has been a need for a trusted intermediary – for example a bank or other financial institution – to serve as a gatekeeper for transactions and many economic activities. Virtual currencies seek to replace the need for a central authority or intermediary with a decentralized, rules-based and open consensus mechanism.² An array of thoughtful business, technology, academic, and policy leaders have extrapolated some of the possible impacts that derive from such an innovation, including how market participants conduct transactions, transfer ownership, and power peer-to-peer applications and economic systems.³

Others, however, argue that this is all hype or technological alchemy and that the current interest in virtual currencies is overblown and resembles wishful thinking, a fever, even a mania. They have declared the 2017 heightened valuation of Bitcoin to be a bubble similar to the famous “Tulip Bubble” of the seventeenth century. They say that virtual currencies perform no socially useful function and, worse, can be used to evade laws or support illicit activity.⁴ Indeed, history has demonstrated to us time-and-again that bad actors will try to invoke the concept of innovation in order to perpetrate age-old fraudulent schemes on the public. Accordingly, some assert that virtual currencies should be banned, as some nations have done.⁵

There is clearly no shortage of opinions on virtual currencies such as Bitcoin. In fact, virtual currencies may be all things to all people: for some, potential riches, the next big thing, a technological revolution, and an exorable value proposition; for others, a fraud, a new form of temptation and allure, and a way to separate the unsuspecting from their money.

Perspective is critically important. As of the morning of February 12, the total value of all outstanding Bitcoin was about \$149 billion based on a Bitcoin price of \$8,800. The

² See generally, CFTC Talks, Episode 24, Dec. 29, 2017, Interview with Coincenter.org Director of Research, Peter Van Valkenburgh, at <http://www.cftc.gov/Media/Podcast/index.htm>.

³ See Marc Andreessen, *Why Bitcoin Matters*, New York Times DealBook (Jan. 21, 2014), <https://dealbook.nytimes.com/2014/01/21/why-bitcoin-matters/>; Jerry Brito and Andrea O’Sullivan, *Bitcoin: A Primer for Policymakers*, George Mason University Mercatus Center (May 3, 2016), <https://www.mercatus.org/publication/bitcoin-primer-policymakers>; Christian Catalini and Joshua S. Gans, *Some Simple Economics of the Blockchain*, Rotman School of Management Working Paper No. 2874598, MIT Sloan Research Paper No. 5191-16 (last updated Sept. 21, 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2874598; Arjun Kharpal, *People are ‘underestimating’ the ‘great potential’ of bitcoin, billionaire Peter Thiel says*, CNBC (Oct. 26, 2017), <https://www.cnbc.com/2017/10/26/bitcoin-underestimated-peter-thiel-says.html>; Hugh Son, *Bitcoin ‘More Than Just a Fad,’ Morgan Stanley CEO Says*, Bloomberg (Sept. 27, 2017), <https://www.bloomberg.com/news/articles/2017-09-27/bitcoin-more-than-just-a-fad-morgan-stanley-ceo-gorman-says>; Chris Brummer and Daniel Gorfine, *FinTech: Building a 21st-Century Regulator’s Toolkit*, Milken Institute (Oct. 21, 2014), available at <http://www.milkeninstitute.org/publications/view/665>.

⁴ Virtual currencies are not unique in their utility in illicit activity. National currencies, like the US Dollar, and commodities, like gold and diamonds, have long been used to support criminal enterprises.

⁵ Countries that have banned Bitcoin include Bangladesh, Bolivia, Ecuador, Kyrgyzstan, Morocco, Nepal, and Vietnam. China has banned Bitcoin for banking institutions.

Bitcoin “market capitalization” is less than the stock market capitalization of a single “large cap” business, such as Disney around \$156 billion. The total value of all outstanding virtual currencies was about \$430 billion. Because virtual currencies like Bitcoin are sometimes considered to be comparable to gold as an investment vehicle, it is important to recognize that the total value of all the gold in the world is estimated by the World Gold Council to be about \$8 trillion, which continues to dwarf the virtual currency market size. Clearly, the column inches of press attention to virtual currency far surpass its size and magnitude in today’s global economy.

Yet, despite being a relatively small asset class, virtual currency presents complex challenges for regulators. Chairman Jay Clayton of the U.S. Securities and Exchange Commission (SEC) and I recently wrote:

The CFTC and SEC, along with other federal and state regulators and criminal authorities, will continue to work together to bring transparency and integrity to these markets and, importantly, to deter and prosecute fraud and abuse. These markets are new, evolving and international. As such they require us to be nimble and forward-looking; coordinated with our state, federal and international colleagues; and engaged with important stakeholders, including Congress⁶.

It is this perspective that has guided our work at the CFTC on virtual currencies. Our work has six broad elements: (1) staff competency; (2) consumer education; (3) interagency cooperation; (4) exercise of authority; (5) strong enforcement; and, (6) heightened review of virtual currency product self-certifications.

Staff Competency: LabCFTC

Last year, our agency was pleased to announce the launch of LabCFTC. In creating LabCFTC, we outlined an agenda designed to ensure that the CFTC would have the tools and understanding to keep pace with technological innovation in the algorithmic, digital world of the 21st century.

LabCFTC is the focal point of the CFTC’s efforts to engage with innovators, facilitate market-enhancing technology and fair competition, and manage the interface between technological innovation, regulatory modernization, and existing rules and regulations. LabCFTC accomplishes its mission in three ways: (1) meeting with innovators, whether they are a startup or an established entity; (2) supporting or incorporating new technologies with the potential to improve our markets or enable the Commission to carry out its mission more effectively and efficiently; and (3) collaborating with external organizations, including domestic and international regulators, focused on sharing information and best practices related to FinTech innovation.

⁶ Jay Clayton and J. Christopher Giancarlo, *Regulators Are Looking at Cryptocurrency: At the SEC and CFTC We Take Our Responsibility Seriously*, Wall Street Journal, Jan. 24, 2018, <https://www.wsj.com/articles/regulators-are-looking-at-cryptocurrency-1516836363>.

Since its launch, LabCFTC has met with over 150 firms and organizations, including through 'office hour' sessions in New York, Chicago, Washington D.C., and earlier this year, the San Francisco Bay Area. Late last year, LabCFTC published a FinTech primer on the topic of virtual currencies, and will soon be releasing a request for public feedback regarding a series of planned innovation competitions beginning in 2018. LabCFTC continues to work closely with domestic and international regulators on FinTech engagement models, and is building out internal educational resources to help inform our staff and policy.

Finally, through its engagement with – and study of – innovative technologies, LabCFTC was recently able to recommend new virtual currency surveillance tools to our Enforcement division. I am pleased to report that our Enforcement team has in fact been able to avail itself of this new technology, and is now able to enhance certain surveillance and enforcement activities. This important development helps underscore the value of LabCFTC, and its effort to ensure that we are prepared to be a 21st century digital regulator.

Customer Education

The CFTC believes that the responsible regulatory response to virtual currencies must start with consumer education. Amidst the wild assertions, bold headlines, and shocking hyperbole about virtual currencies, there is a need for much greater understanding and clarity.

Over the past five months, the CFTC has produced an unprecedented amount of public educational materials on virtual currencies, all of which are located on the Commission's dedicated "Bitcoin" web page. Launched on December 15, 2017, www.cftc.gov/bitcoin features both consumer and industry-facing materials which include a backgrounder on the CFTC's oversight and approach to virtual currency markets, a "primer" on virtual currencies, several customer advisories on risks associated with speculating or investing in Bitcoin and other virtual currencies, a fact sheet outlining the self-certification process, and a *CFTC Talks* podcast on Bitcoin. The CFTC will be publishing two print brochures on Bitcoin and virtual currencies that will be available soon for widespread dissemination.

Along with the resources available on www.cftc.gov/bitcoin, the CFTC has produced several other podcasts on blockchain and virtual currencies, all of which are available on the Commission's website or from various streaming services. For market participants, the CFTC also issues a weekly publication of Bitcoin futures "Commitment of Traders" data and an analysis of Bitcoin spot market data.

The CFTC's **Office of Customer Education and Outreach (OCEO)**, which was established in 2011 to administer the CFTC's consumer education initiatives, has played an integral role in both authoring educational materials for consumers and working with partners to spread the word about the CFTC's Bitcoin and virtual currency resources.

OCEO is conducting outreach to various audiences such as retail investors, industry professionals, seniors, and vulnerable populations who may be targeted by unscrupulous individuals with the intent to defraud them of their savings. Some examples of outreach include coordinating with national non-profits, federal regulators and state agencies to conduct webinars, educational campaigns and in-person events. OCEO also provides partners with content to use for their constituent outreach and communications, in order to amplify the CFTC's customer education efforts. OCEO is also reaching intermediaries through trainings which educate participants on the CFTC's fraud prevention resources to protect and assist their constituencies.

Interagency Coordination

The CFTC's enforcement jurisdiction over virtual currencies is not exclusive. As a result, the U.S. approach to oversight of virtual currencies has evolved into a multifaceted, multi-regulatory approach that includes:

- The **SEC's** increasingly strong action against unregistered securities offerings, whether they are called a virtual currency or initial coin offering in name;
- **State Banking** regulators overseeing certain U.S. and foreign virtual currency spot exchanges largely through state money transfer laws;
- The **Internal Revenue Service** treating virtual currencies as property subject to capital gains tax;
- The **Treasury's Financial Crimes Enforcement Network (FinCEN)** monitoring Bitcoin and other virtual currency transfers for anti-money laundering purposes.

The CFTC actively communicates its approach to virtual currencies with other Federal regulators, including the **Federal Bureau of Investigation (FBI)** and the **Department of Justice (DOJ)** and through the **Financial Stability Oversight Council (FSOC)**, chaired by the Treasury Department. The CFTC has also been in close communication with the SEC with respect to policy and jurisdictional considerations, especially in connection with recent virtual currency enforcement cases. In addition, we have been in communication with overseas regulatory counterparts through bilateral discussions and in meetings of the **Financial Stability Board (FSB)** and the **International Organization of Securities Commissions (IOSCO)**.

CFTC Authority and Oversight

In 2015, the CFTC determined that virtual currencies, such as Bitcoin, met the definition of "commodity" under the CEA. Nevertheless, to be clear, the CFTC does **not** have regulatory jurisdiction over markets or platforms conducting cash or "spot" transactions in virtual currencies or other commodities or over participants on such platforms. More specifically, the CFTC does not have authority to conduct regulatory oversight over spot virtual currency platforms or other cash commodities, including imposing registration requirements, surveillance and monitoring, transaction reporting, compliance with

personnel conduct standards, customer education, capital adequacy, trading system safeguards, cyber security examinations or other requirements. In fact, current law does not provide any U.S. Federal regulator with such regulatory oversight authority over spot virtual currency platforms operating in the United States or abroad. However, the CFTC does have enforcement jurisdiction to investigate through subpoena and other investigative powers and, as appropriate, conduct civil enforcement action against fraud and manipulation in virtual currency derivatives markets and in underlying virtual currency spot markets just like other commodities.

In contrast to its lack of regulatory authority over virtual currency spot markets, the CFTC does have both regulatory and enforcement jurisdiction under the CEA over derivatives on virtual currencies traded in the United States. This means that for derivatives on virtual currencies traded in U.S. markets, the CFTC conducts comprehensive regulatory oversight, including imposing registration requirements and compliance with a full range of requirements for trade practice and market surveillance, reporting and monitoring and standards for conduct, capital requirements and platform and system safeguards.

The CFTC has been straightforward in asserting its area of statutory jurisdiction concerning virtual currency derivatives. As early as 2014, former CFTC Chairman Timothy Massad discussed virtual currencies and potential CFTC oversight under the Commodity Exchange Act (CEA).⁷ And as noted above, in 2015, the CFTC found virtual currencies to be a commodity.⁸ In that year, the agency took enforcement action to prohibit wash trading and prearranged trades on a virtual currency derivatives platform.⁹ In 2016, the CFTC took action against a Bitcoin futures exchange operating in the U.S. that failed to register with the agency.¹⁰ Last year, the CFTC issued proposed guidance on what is a derivative market and what is a spot market in the virtual currency context.¹¹ The agency also issued warnings about valuations and volatility in spot virtual currency markets.¹² and launched an unprecedented consumer education effort described earlier herein.

⁷ Testimony of CFTC Chairman Timothy Massad before the U.S. Senate Committee on Agriculture, Nutrition and Forestry (Dec. 10, 2014), <http://www.cftc.gov/PressRoom/SpeechesTestimony/opamassad-6>.

⁸ *In re Coinflip, Inc.*, Dkt. No. 15-29 (CFTC Sept. 17, 2015), <http://www.cftc.gov/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfcoinfliporder09172015.pdf>.

⁹ *In re TeraExchange LLC*, Dkt. No. 15-33 (CFTC Sept. 24, 2015), <http://www.cftc.gov/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfteraexchangeorder92415.pdf>.

¹⁰ *In re BXFNA Inc. d/b/a Bitfinex*, Dkt. No. 16-19 (CFTC June 2, 2016), <http://www.cftc.gov/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfbfxnaorder060216.pdf>.

¹¹ CFTC, Retail Commodity Transactions Involving Virtual Currency, 82 Fed. Reg. 60335 (Dec. 20, 2017), www.gpo.gov/fdsys/pkg/FR-2017-12-20/pdf/2017-27421.pdf.

¹² CFTC, A CFTC Primer on Virtual Currencies (Oct. 17, 2017), http://www.cftc.gov/idc/groups/public/documents/file/labcftc_primercurrencies100417.pdf.

Enforcement

The CFTC Division of Enforcement is a premier Federal civil enforcement agency dedicated to deterring and preventing manipulation and other disruptions of market integrity, ensuring the financial integrity of all transactions subject to the CEA, and protecting market participants from fraudulent or other abusive sales practices and misuse of customer assets.

The CFTC has been particularly assertive of its enforcement jurisdiction over virtual currencies. It has formed an internal virtual currency enforcement task force to garner and deploy relevant expertise in this evolving asset class. The task force shares information and works cooperatively with counterparts at the SEC with similar virtual currency expertise.

Over the past several months, the CFTC filed a series of civil enforcement actions against perpetrators of fraud, market manipulation and disruptive trading involving virtual currency. These include:

- (i) ***Gelfman Blueprint, Inc.***, which charged defendants with operating a Bitcoin Ponzi scheme that fraudulently solicited approximately 80 persons supposedly for algorithmic trading in virtual currency that was fake, the purported performance reports of which were false, and – as in all Ponzi schemes – payouts of supposed profits to customers actuality consisted of other customers' misappropriated funds.
- (ii) ***My Big Coin Pay Inc.***, which charged the defendants with commodity fraud and misappropriation related to the ongoing solicitation of customers for a virtual currency known as My Big Coin;
- (iii) ***The Entrepreneurs Headquarters Limited***, which charged the defendants with a fraudulent scheme to solicit Bitcoin from members of the public, misrepresenting that customers' funds would be pooled and invested in products including binary options, and instead misappropriated the funds and failed to register as a Commodity Pool Operator; and
- (iv) ***Coin Drop Markets***, which charged the defendants with fraud and misappropriation in connection with purchases and trading of Bitcoin and Litecoin.

These recent enforcement actions confirm that the CFTC, working closely with the SEC and other fellow financial enforcement agencies, will aggressively prosecute bad actors that engage in fraud and manipulation regarding virtual currencies.

New Product Self-Certification

Under CEA and Commission regulations and related guidance, futures exchanges may self-certify new products on twenty-four hour notice prior to trading. In the past decade and a half, over 12,000 new futures products have been self-certified.¹³ It is clear that Congress and prior Commissions deliberately designed the product self-certification framework to give futures exchanges, in their role as self-regulatory organizations, the ability to quickly bring new products to the marketplace. The CFTC's current product self-certification framework has long been considered to function well and be consistent with public policy that encourages market-driven innovation that has made America's listed futures markets the envy of the world.

Practically, both the CME Group (CME) and CBOE Futures Exchange (CBOE) had numerous discussions and exchanged numerous draft product terms and conditions with CFTC staff over a course of months prior to their certifying and launching Bitcoin futures in December 2017. CME launched a Bitcoin Reference Rate in November 2016. CBOE first proposed to CFTC staff a Bitcoin futures product in July 2017. This type of lengthy engagement is not unusual during the self-certification process for products that may raise more complex issues.

The CFTC staff undertook its review of CME's and CBOE's Bitcoin futures products with considered attention. Given the emerging nature and heightened attention of these products, staff conducted a "heightened review" of CME's and CBOE's responsibilities under the CEA and Commission regulations to ensure that their Bitcoin futures products and their cash-settlement processes were not readily susceptible to manipulation,¹⁴ and the risk management of the associated Derivatives Clearing Organizations (DCOs) to ensure that the products were sufficiently margined.¹⁵

Over the course of its review, CFTC staff obtained the voluntary cooperation of CME and CBOE with a set of enhanced monitoring and risk management steps.

1. Designated contract markets (DCMs) setting exchange large trader reporting thresholds at five bitcoins or less;
2. DCMs entering direct or indirect information sharing agreements with spot market platforms to allow access to trade and trader data making up the underlying index that the futures contracts settle to;

¹³ Prior to the changes made in the Commodity Futures Modernization Act of 2000 (CFMA) and the Commission's subsequent addition of Part 40, exchanges submitted products to the CFTC for approval. From 1922 until the CFMA was signed into law, less than 800 products were approved. Since then, exchanges have certified over 12,000 products. For financial instrument products specifically, the numbers are 494 products approved and 1,938 self-certified. See <http://www.cftc.gov/IndustryOversight/ContractsProducts/index.htm>.

¹⁴ See CEA Section 5(d)(3), 7 U.S.C. 7(d)(3); Section 5(d)(4), 7 U.S.C. 7(d)(4); 17 C.F.R. 38.253 and 38.254(a), and Appendices B and C to Part 38 of the CFTC's regulations.

¹⁵ CEA Section 5b(c)(2)(D)(iv), 7 U.S.C. 7a-1(c)(2)(D)(iv) ("The margin from each member and participant of a derivatives clearing organization shall be sufficient to cover potential exposures in normal market conditions.").

3. DCMs agreeing to engage in monitoring of underlying index data from cash markets and identifying anomalies and disproportionate moves;
4. DCMs agreeing to conduct inquiries, as appropriate, including at the trade settlement and trader level when anomalies or disproportionate moves are identified;
5. DCMs agreeing to regular communication with CFTC surveillance staff on trade activities, including providing trade settlement and trader data upon request;
6. DCMs agreeing to coordinate product launches to enable the CFTC's market surveillance branch to monitor developments; and
7. DCOs setting substantially high initial¹⁶ and maintenance margin.

The first six of these elements were used to ensure that the new product offerings complied with the DCM's obligations under the CEA core principles and CFTC regulations and related guidance. The seventh element, setting high initial and maintenance margins, was designed to ensure adequate collateral coverage in reaction to the underlying volatility of Bitcoin.

In crafting its process of "heightened review" for compliance, CFTC staff prioritized visibility, data, and monitoring of markets for Bitcoin derivatives and underlying settlement reference rates. CFTC staff felt that in gaining such visibility, the CFTC could best look out for Bitcoin market participants and consumers, as well as the public interest in Federal surveillance and enforcement. This visibility greatly enhances the agency's ability to prosecute fraud and manipulation in both the new Bitcoin futures markets and in its related underlying cash markets.

As for the interests of clearing members, the CFTC recognized that large global banks and brokerages that are DCO clearing members are able to look after their own commercial interests by choosing not to trade Bitcoin futures, as some have done, requiring substantially higher initial margins from their customers, as many have done, and through their active participation in DCO risk committees.

After the launch of Bitcoin futures, some criticism was directed at the self-certification process from a few market participants. Some questioned why the Commission did not hold public hearings prior to launch. However, under the CEA and CFTC regulations, it is the function of the exchanges and clearinghouses - and not CFTC staff¹⁷ - to solicit and address stakeholder concerns in deciding to list or clear new products. The CFTC staff's focus is on how the futures contracts and cash settlement indices are designed to reduce threats of manipulation and the appropriate level of contract margining to meet CEA and Commission regulations.

¹⁶ In the case of CME and CBOE Bitcoin futures, the initial margins were ultimately set at 47% and 44% by the respective DCOs. By way of comparison that is more than ten times the margin required for CME corn futures products.

¹⁷ Unlike provisions in the CEA and Commission regulations that provide for public comment on *rule* self-certifications, there is no provision in statute or regulation for public input into CFTC staff review of *product* self-certifications. It is hard to believe that Congress was not deliberate in making that distinction.

I feel strongly that interested parties, especially clearing members, should *indeed* have an opportunity to raise appropriate concerns for consideration by regulated platforms proposing virtual currency derivatives as well as by DCOs considering clearing new virtual currency products. That is why I have asked CFTC staff to add an additional element to the Review and Compliance Checklist for virtual currency product self-certifications. That is, requesting DCMs and Swap Execution Facilities (SEFs) to disclose to CFTC staff what affirmative steps they have taken in their capacity as self-regulatory organizations to gather and accommodate appropriate input from concerned parties, including trading firms and FCMs. Further, CFTC staff will take a close look at DCO governance around the clearing of new products and formulate recommendations for possible further action.

Although there is ready legal support in statute and CFTC regulation for many of the elements of the virtual currency review checklist, the staff will continue to work with exchanges on a voluntary basis at present. Nevertheless, it is worth considering if specific rule changes are appropriate to accommodate the virtual currency review checklist in its own right. I have asked the CFTC's General Counsel to discuss with my fellow Commissioners the statutory basis for the various elements of the review checklist. I have also asked him to propose for Commission consideration possible regulatory and/or statutory steps to underpin the staff's review process for virtual currency products. Commissioner Behnam has asked some important questions on the self-certification process that merit thoughtful consideration as we go forward.¹⁸

I believe that the CFTC's response to the self-certification of Bitcoin futures has been a balanced one. It has resulted in the world's first federally regulated Bitcoin futures market. Had it even been possible, blocking self-certification would not have stopped the rise of Bitcoin or other virtual currencies. Instead, it would have ensured that virtual currency spot markets continue to operate without effective and data-enabled federal regulatory surveillance for fraud and manipulation.

Potential Benefits

I have spoken publicly about the potential benefits of the technology underlying Bitcoin, namely Blockchain or distributed ledger technology (DLT).¹⁹ Distributed ledgers – in various open system or private network applications – have the potential to enhance economic efficiency, mitigate centralized systemic risk, defend against fraudulent activity and improve data quality and governance.²⁰

DLT is likely to have a broad and lasting impact on global financial markets in

¹⁸ Statement of Commissioner Behnam before the Market Risk Advisory Committee (January 21, 2018), <http://www.cftc.gov/PressRoom/SpeechesTestimony/behnamstatement013118>

¹⁹ J. Christopher Giancarlo, *Keynote Address of Commissioner J. Christopher Giancarlo before the Markit Group, 2016 Annual Customer Conference New York*, May 10, 2016,

<http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-15>.

²⁰ *Id.*

payments, banking, securities settlement, title recording, cyber security and trade reporting and analysis.²¹ When tied to virtual currencies, this technology aims to serve as a new store of value, facilitate secure payments, enable asset transfers, and power new applications.

Additionally, DLT will likely develop hand-in-hand with new “smart” contracts that can value themselves in real-time, report themselves to data repositories, automatically calculate and perform margin payments and even terminate themselves in the event of counterparty default.²²

DLT may enable financial market participants to manage the significant operational, transactional and capital complexities brought about by the many mandates, regulations and capital requirements promulgated by regulators here and abroad in the wake of the financial crisis.²³ In fact, one study estimates that DLT could eventually allow financial institutions to save as much as \$20 billion in infrastructure and operational costs each year.²⁴ Another study reportedly estimates that blockchain could cut trading settlement costs by a third, or \$16 billion a year, and cut capital requirements by \$120 billion.²⁵ Moving from systems-of-record at the level of a firm to an authoritative system-of-record at the level of a market is an enormous opportunity to improve existing market infrastructure.²⁶

Outside of the financial services industry, many use cases for DLT are being posited from international trade to charitable endeavors and social services. BNSF Railway Co, a unit of Berkshire Hathaway Inc. recently announced that it became the first major U.S. railroad to join the Blockchain in Transport Alliance, a group of more than 200 companies considering transportation and logistics applications of digital ledger technology.²⁷ Other DLT use cases include: legal records management, inventory control and logistics;

²¹ See, e.g., Larry Greenemeier, *Can't Touch This: New Encryption Scheme Targets Transaction Tampering*, Scientific American, May 22, 2015, <http://www.scientificamerican.com/article/can-t-touch-this-new-encryption-scheme-targets-transaction-tampering/>.

²² See Massimo Morini & Robert Sams, *Smart Derivatives Can Cure XVA Headaches*, Risk Magazine, Aug. 27, 2015, <http://www.risk.net/risk-magazine/opinion/2422606/-smart-derivatives-can-cure-xva-headaches>; see also Jeffrey Maxim, *UBS Bank Is Experimenting with “Smart-Bonds” Using the Bitcoin Blockchain*, Bitcoin Magazine, June 12, 2015, <https://bitcoinmagazine.com/articles/ubs-bank-experimenting-smart-bonds-using-bitcoin-blockchain-1434140571>; see also Pete Harris, *UBS Exploring Smart Bonds on Block Chain*, Block Chain Inside Out, June 15, 2015, http://harris-on.typepad.com/block_chain_io/2015/06/ubs-exploring-smart-bonds-on-block-chain.html; See generally Galen Stops, *Blockchain: Getting Beyond the Buzz*, Profit & Loss, Aug.–Sept. 2015, at 20, <http://www.profit-loss.com/articles/analysis/technology-analysis/blockchain-getting-beyond-the-buzz>.

²³ See, e.g., *Oversight of Dodd-Frank Act Implementation*, U.S. House Financial Services Committee, <http://financialservices.house.gov/dodd-frank/> (last visited Mar. 2, 2016).

²⁴ Santander InnoVentures, Oliver Wyman & Anthemis Group, *The Fintech Paper 2.0: Rebooting Financial Services 15* (2015), <http://santanderinnoventures.com/wp-content/uploads/2015/06/The-Fintech-2-0-Paper.pdf>.

²⁵ Telis Demos, *Bitcoin's Blockchain Technology Proves Itself in Wall Street Test*, Apr. 7, 2016, *The Wall Street Journal*, <http://www.wsj.com/articles/bitcoins-blockchain-technology-proves-itself-in-wall-street-test-1460021421>.

²⁶ Based on conversations with R3 CEV, <http://r3cev.com/>.

²⁷ Ryan Henriksen, *Buffett's BNSF railroad eyes blockchain for shipping freight*, Reuters, February 5, 2018, <https://www.msn.com/en-us/finance/companies/buffetts-bnsf-railroad-eyes-blockchain-for-shipping-freight/ar-BBIJTUr>.

charitable donation tracking and confirmation; voting security and human refugee identification and relocation.²⁸

Yet, while DLT promises enormous benefits to commercial firms and charities, it also promises assistance to financial market regulators in meeting their mission to oversee healthy markets and mitigate financial risk. What a difference it would have made on the eve of the financial crisis in 2008 if regulators had access to the real-time trading ledgers of large Wall Street banks, rather than trying to assemble piecemeal data to recreate complex, individual trading portfolios. I have previously speculated²⁹ that, if regulators in 2008 could have viewed a real-time distributed ledger (or a series of aggregated ledgers across asset classes) and, perhaps, been able to utilize modern cognitive computing capabilities, they may have been able to recognize anomalies in market-wide trading activity and diverging counterparty exposures indicating heightened risk of bank failure. Such transparency may not, by itself, have saved Lehman Brothers from bankruptcy, but it certainly would have allowed for far prompter, better informed, and more calibrated regulatory intervention instead of the disorganized response that unfortunately ensued.

Policy Considerations

Virtual currencies require attentive regulatory oversight in key areas, especially to the extent that retail investors are attracted to this space. SEC Chairman Clayton and I stated in our joint op-ed, that:

“Our task, as market regulators, is to set and enforce rules that foster innovation while promoting market integrity and confidence. In recent months, we have seen a wide range of market participants, including retail investors, seeking to invest in DLT initiatives, including through cryptocurrencies and so-called ICOs—initial coin offerings. Experience tells us that while some market participants may make fortunes, the risks to all investors are high. Caution is merited.

“A key issue before market regulators is whether our historic approach to the regulation of currency transactions is appropriate for the cryptocurrency markets. Check-cashing and money-transmission services that operate in the U.S. are primarily state-regulated. Many of the internet-based cryptocurrency trading platforms have registered as payment services and are not subject to direct oversight by the SEC or the CFTC. We would support policy efforts to revisit these frameworks and ensure they are effective and efficient for the digital era.”³⁰

²⁸ Frisco d'Anconia, *IOTA Blockchain to Help Trace Families of Refugees During and After Conflicts*, Cointelegraph.com, Aug. 8, 2017, <https://cointelegraph.com/news/iota-blockchain-to-help-trace-families-of-refugees-during-and-after-conflicts>.

²⁹ See *supra* note 22.

³⁰ See *supra* note 5.

As the Senate Agriculture Committee and other Congressional policy makers consider the current state of regulatory oversight of cash or “spot” transactions in virtual currencies and trading platforms, consideration should be given to shortcomings of the current approach of state-by-state money transmitter licensure that leaves gaps in protection for virtual currency traders and investors. Any proposed Federal regulation of virtual currency platforms should be carefully tailored to the risks posed by relevant trading activity and enhancing efforts to prosecute fraud and manipulation. Appropriate Federal oversight may include: data reporting, capital requirements, cyber security standards, measures to prevent fraud and price manipulation and anti-money laundering and “know your customer” protections. Overall, a rationalized federal framework may be more effective and efficient in ensuring the integrity of the underlying market.

CFTC ENFORCEMENT ACTIVITY

The day after the White House announced its intention to nominate me as CFTC Chairman, I spoke to hundreds of industry executives at the annual Futures Industry Conference.³¹ I issued a warning to those who may seek to cheat or manipulate America’s derivatives markets. I said, “There will be no pause, no let up and no reduction in our duty to enforce the law and punish wrongdoing in our derivatives markets. The American people are counting on us.” I am committed to punishing bad actors in the marketplace and to do so with swift justice to stop their bad actions. Through robust enforcement of our laws and regulation, we will continue to send a clear signal to the marketplace about our seriousness in punishing bad behavior and compensating victims. The following is a summary of recent CFTC enforcement activity.

Overview of FY 2017

In the fiscal year that ended September 30, 2017, the CFTC brought 49 enforcement-related actions, which included significant actions to root out manipulation and spoofing and to protect retail investors from fraud. The CFTC also pursued significant and complex litigation, including cases charging manipulation, spoofing, and unlawful use of customer funds. The CFTC obtained orders totaling \$412,726,307 in restitution, disgorgement and penalties. Specifically, in the fiscal year, the CFTC obtained \$333,830,145 in civil monetary penalties and \$78,896,162 in restitution and disgorgement orders. Of the civil monetary penalties imposed, the CFTC collected and deposited at the U.S. Treasury more than \$265 million.

Retail Fraud

The CFTC brought a significant number of retail fraud actions in FY 2017 (20 out of the 49). For example, in February 2017, the CFTC filed and settled charges against Forex Capital Markets LLC for \$7 million for defrauding retail foreign exchange customers over a five year time period by concealing its relationship with its most important market maker

³¹ Remarks of Acting Chairman J. Christopher Giancarlo before the 42nd Annual International Futures Industry Conference, Mar. 15, 2017, at: <http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-20>

and misrepresenting that its platform had no conflicts of interests with its customers. That month the CFTC also brought an action charging Carlos Javier Ramirez, Gold Chasers, Inc., and Royal Leisure International, Inc. with misappropriating millions in customer funds and engaging in fraudulent sales solicitations in connection with a Ponzi scheme involving the purported purchase of physical gold.

In May 2017, the CFTC filed charges against an individual and his company with defrauding 40 investors out of at least \$13 million in connection with a commodity pool they operated; investors included family members and members of his church. In June 2017, the CFTC filed charges against two individuals and their company with fraudulently soliciting customers, including at a church gathering, and defrauding them out of more than \$11 million. The pair was also arrested by the FBI on related criminal charges.

In September 2017, the CFTC filed one of the largest precious metals fraud cases in the history of the Commission. As alleged, the Defendants defrauded thousands of retail customers—many of whom are elderly—out of hundreds of millions of dollars as part of a multi-year scheme in connection with illegal, off-exchange leveraged precious metal transactions.

Market Manipulation

In February 2017, the CFTC settled with RBS for \$85 million for attempted manipulation of ISDAFIX, a leading global benchmark for interest rate swaps and related derivatives. The CFTC also brought actions against The Royal Bank of Scotland plc and Goldman Sachs Group, Inc. and Goldman, Sachs & Co. for attempted manipulation of the ISDAFIX, resulting in \$85 million and \$120 million in penalties, respectively. In February 2018, the CFTC settled with Deutsche Bank Securities Inc. for \$70 million for attempted manipulation of ISDAFIX. Since 2012, the CFTC has imposed over \$5 billion in penalties against banks and brokers with respect to benchmark manipulation settlements.

Disruptive Trading

In November 2016, the CFTC entered into a consent order with Navinder Singh Sarao and Nav Sarao Futures Limited PLC to settle allegations related to the 2010 flash crash for \$25.7 million in monetary sanctions, \$12.9 million in disgorgement, and a permanent trading and registration ban. In December 2016, the CFTC settled with trading company 3Red and trader Igor Oystacher imposing a \$2.5 million penalty, a monitor for three years, and requiring the use of certain trading compliance tools for intentionally and repeatedly engaging in a manipulative and deceptive spoofing scheme while placing orders for and trading futures contracts on multiple registered entities.

In January 2018, the CFTC fined Citigroup \$25 million for failing to diligently supervise the activities of its employees and agents in conjunction with spoofing orders in the U.S. Treasury futures markets. Later that year, in July 2017, the CFTC entered into its first non-prosecution agreements (NPA) with three former Citigroup traders who admitted to spoofing in the U.S. Treasury futures markets in 2011 and 2012. The NPAs emphasize

the traders' timely and substantial cooperation, immediate willingness to accept responsibility for their misconduct, material assistance provided to the CFTC's investigation of Citigroup, and the absence of a history of prior misconduct.

In January 2018, in conjunction with the DOJ and FBI, the CFTC announced criminal and civil enforcement actions against three banks and six individuals involved in commodities fraud and spoofing schemes. The banks were fined \$46.6 million in penalties. Appendix A summarizes CFTC enforcement activities in the areas of manipulation, attempted manipulation, false reporting, spoofing, and/or manipulative or deceptive device since FY 2011.

CURRENT AGENDA

Swaps Data Reporting

As part of the Commission's Roadmap to Achieve High Quality Swaps Data issued on July 10, 2017 and the CPMI-IOSCO harmonization process, we will be proposing several changes to swap data reporting rules. These efforts seek to eliminate redundancy, streamline reporting, and harmonize internationally.

At the heart of the 2008 financial crisis was the inability of regulators to assess and quantify the counterparty credit risk of large banks and swap dealers. The legislative solution was to establish swap data repositories (SDRs) under the Dodd-Frank Act. Although much hard work and effort has gone into establishing SDRs and supplying them with swaps data, nine years after the financial crisis the SDRs still cannot provide regulators with a complete and accurate picture of bank counterparty credit risk in global markets. In part, that is because international regulators have not yet harmonized global reporting protocols and data fields across international jurisdictions.

Of all the many mandates to emerge from the financial crisis, visibility into counterparty credit risk of major financial institutions was perhaps the most pressing. The failure to accomplish it is certainly the most disappointing.

The CFTC is committed to success in the global reform efforts towards swaps data reporting. That is why we are actively engaged in global swaps data harmonization efforts while simultaneously looking to improve upon the current processes for swaps reporting that were put in place back in 2012 and 2013.

On the international front, the CFTC is co-leading several global initiatives to harmonize derivatives reporting along with fellow overseas regulators via Committee on Payments and Market Infrastructures-International Organization of Securities Commission (CPMI-IOSCO) and the Financial Stability Board (FSB):

- Unique transaction identifiers (or UTIs) to track the lifecycle of a derivative transaction from creation until final termination;

- Unique product identifiers (or UPIs) to identify the instrument type and elements of the product referenced in a derivative; and
- Critical data elements (or CDEs) to provide basic information about the terms of the transaction, such as notional amount, price, and collateral movements.

CPMI-IOSCO published final technical guidance on UTIs in early 2017 and final guidance on UPIs is expected soon. We expect that guidance on CDE fields to be published by Q1 of 2018.

An FSB sponsored group, the Group on UPI and UTI Governance, continues to work on governance issues for these identifiers, such as implementation. This important international work is ongoing with the CFTC's full support and involvement.

Meanwhile, here at home, the CFTC issued for comment in July a swaps data reporting "Roadmap." The CFTC received 22 comment letters on the Roadmap that were overwhelmingly well informed and supportive. Division of Market Oversight (DMO) staff carefully considered them and is working to implement many of the recommendations.

A major focus of implementing the Roadmap will be incorporating harmonized UTI, UPI, and CDE guidance into our reporting regime. Wherever possible, we want to harmonize CFTC reporting elements with international CDE guidance. Still, it is possible that the CFTC will require some additional fields for CFTC specific use cases that are not addressed at the international level.

The Roadmap has carefully calibrated the release of CFTC rules to follow the release of international technical guidance on CDEs in order to avoid conflict. Furthermore, the Roadmap attempts to incorporate a realistic implementation timeline to allow for the appropriate building and testing by all relevant parties. We are sensitive to the complexity of changes to rules with multiple interconnected parts like swaps reporting. We will work with market participants to set realistic compliance dates.

To be clear, the international CPMI-IOSCO process is aimed at harmonizing what must be reported on a derivative, not when and how to report. We need to make sure that the *when* and *how* are also covered. In the end, CFTC *when* and *how* rules for swaps reporting may be different than those adopted by overseas regulators. In some areas, where we believe we have the better approach, such as single-sided reporting, we intend to pursue the CFTC's current approach. Yet, in other areas where, in light of experience, it appears that overseas regulators have adopted a better way, such as T+1 regulatory reporting, we will consider making changes.

Swaps data reporting is new for all of us. No regulator has yet found the optimal approach to success. Yet, we are all determined to get there. None are more determined than the CFTC. That is why we published the swaps data Roadmap.

There is an old saying, "If you don't know where you're going, you'll never get there." The Roadmap shows where the CFTC is going. We are determined to get there.

Entity Netted Notionals

The CFTC recently proposed a more accurate measurement of the size of the interest rate swap (IRS) markets, specifically focused on its risk transfer function. Under the methodology proposed in a paper by CFTC Chief Economist Bruce Tuckman the size of the IRS markets would be determined by the calculation of "Entity-Netted Notionals" (ENNs) instead of the current gross notional measure used today that broadly overstates risk transfer in the markets.³²

ENNs are calculated by: (1) converting the long and short notional amounts of each counterparty to five-year risk equivalents; (2) netting longs against shorts in a given currency within pairs of legal entities; and (3) summing the resulting net longs or shorts across counterparties.

Under the ENNs calculation, the value of the current IRS markets would be approximately \$15 trillion, which represents roughly 8% of the current \$179 trillion market valuation using the conventional notional calculation methodology. Measured with ENNs, the \$15 trillion size of the interest rate swap market is of the same order of magnitude as other fixed income markets, such as: the US Treasury market at \$16 trillion, the corporate bond market at \$12 trillion, the mortgage market at \$15 trillion, and the municipal securities market at \$4 trillion. At \$15 trillion, the IRS market is more normalized and intelligible as part of the US economy.

However, ENNs are not intended to measure counterparty or operational risk. I have not asked the CFTC staff to use the calculation to rethink regulatory thresholds, such as the swap dealer *de minimis* registration threshold.

De Minimis and Position Limits

The CFTC has been ahead of most of the world's market regulators in implementing G-20 market reforms. It has also completed most mandates set out in the Dodd-Frank Act. Nevertheless, there are still some Dodd-Frank rulemakings that remain incomplete or still have outstanding questions that need addressing: calculation of the *de minimis* exception to the swap dealer registration requirement and position limits on derivative transactions. The CFTC will continue to move forward on these in 2018.

³² Richard Haynes, John Roberts, Rajiv Sharma, and Bruce Tuckman, January 2018, *Introducing ENNs: A Measure of the Size of Interest Rate Swap Markets*, <http://www.cftc.gov/PressRoom/PressReleases/pr7691-18>

Swap Dealer *De Minimis*. The level of the *de minimis* threshold is a critically important issue. It must be addressed with sound data and thorough analysis. It must be addressed this year.

Last October, I called for a one-year delay in implementation of the threshold. I noted that the Commission had recently sworn in two new commissioners and appointed a new Director of the Division of Swap Dealer and Intermediary Oversight (DSIO). I felt the delay was necessary for them and the staff to understand and analyze complete and current trade data. I said, that, "It is hard to get something as complicated as this right when we are under a time crunch."

I am pleased to say that DSIO has now compiled and analyzed swap dealer trading data through the end of 2017. DSIO staff is in the process of scheduling meetings over the next few weeks to present this data and analysis to my staff and that of my fellow Commissioners. That data and analysis will provide the basis for thorough consideration of the *de minimis* threshold by the full Commission in the months to come. I have previously pledged to complete this rulemaking in 2018. I intend to keep that pledge.

Position Limits. As you know, in December 2016, the CFTC put forth a position limits proposal for public consideration and input. I voted in favor. The proposal generated dozens of detailed comments and concerns in the first half of 2017. During the course of 2017, staff of the CFTC's Division of Market Oversight (DMO) analyzed those comments and provided written summaries for all of the Commissioners' staffs. More recently, DMO staff began work on revisions to the proposal that are responsive to the public comments. I look forward to sitting down with the Division in the near future to discuss their suggestions.

When I testified before this Committee last June, I committed to moving forward with a final position limits rule. It is an enormously important undertaking that will impact America's farmers, ranchers, and manufacturers and their ability to hedge legitimate production costs. This rulemaking has been underway for some time. There are thousands of comment letters on the topic and there are opinions on all sides of the issue, including by American agriculture producers. Based on public comments, it is clear that the Commission has not yet got it right.

That is why I believe that a final position limits rulemaking should be done properly by a full Commission of five commissioners. It will ensure that any final position limits rule is indeed final and stands the test of time and changes in future administrations. We must ensure regulatory barriers do not stand in the way of long standing hedging practices of American farmers and ranchers, who depend on our markets.

Fiscal Year 2019 Budget Request

If fulfilled, the CFTC's FY 2019 budget request submitted to Congress would maximize the Commission's ability to oversee our nation's swaps, futures and options markets.

The FY 2019 budget reflects the true needs of a policy setting and civil law enforcement agency that has the duty to ensure the derivatives markets operate effectively. At a time in history when the nature of our financial markets are rapidly transforming, as digital technologies are having an increasing impact on everything in the early Twenty-First Century from information transfer to retail shopping to personal communications, this budget will give the Commission the resources it needs to put in place and oversee responsible regulations that allow for innovation and enable our markets to remain competitive and safe at home and abroad.

In order for the CFTC to fulfill its duty to oversee these vital derivatives markets in FY 2019, I am requesting \$281.5 million. This is an increase of \$31.5 million over the enacted FY 2017 appropriation and is the same level of funding that I requested in FY 2018. I believed then and still believe that this is the level of funding necessary to fulfill our statutory mission.

The Commission will invest in its capacity to develop economic modeling and econometric capabilities aimed at boosting the CFTC's analytical expertise and monitoring of systemic risk in the derivatives markets, in particular with regard to central counterparty clearinghouses. These investments include the expansion of sophisticated econometric and quantitative analysis devoted to risk modeling, stress tests, and other stability-related evaluations necessary for market oversight. Furthermore, such analysis conducted by the CFTC will aid in rulemaking, policy development, and enhance the Commission's ability to provide high-quality cost benefit considerations for decision-making.

The Commission expects the number of designated clearing organizations (DCOs) to continue to increase in FY 2019, with many expanding their business to other jurisdictions around the world. As the number of DCOs increase, the complexity of the oversight program will increase. It is imperative that the Commission strengthen its examinations capability to enable it to keep pace with the growth in the amount and value of swaps cleared by DCOs pursuant to global regulatory reform implementation. As the size and scope of DCOs increase, so too has the complexity of the counterparty risk management oversight programs and liquidity risk management procedures of the DCOs under CFTC regulation here and abroad. In addition, the Commission will also need to enhance its financial analysis tools to aggregate and evaluate risk across all DCOs.

As part of this request, the Commission will also address market enhancing innovation through financial technology (FinTech). FinTech comprises a range of technology in the financial services sector and includes innovations in retail banking, investment and virtual currencies like bitcoin. In FY 2018, the exchanges self-certified several new contracts for futures products for virtual currencies. These innovations impact the regulatory landscape and with this budget request, the Commission will invest more in new technologies and tools that support these surveillance and enforcement efforts.

CFTC / Kansas State University Conference on Agricultural Commodities Futures Markets

The CFTC has teamed up with the Center for Risk Management Education and Research at Kansas State University to host a conference titled, "Protecting America's Agricultural Markets: An Agricultural Commodity Futures Conference," on April 5 - 6, 2018, in Overland Park, Kansas. This first-of-its-kind conference will include robust presentations and discussions on current macro-economic trends and issues affecting American agricultural futures markets and the importance of these markets for managing risk and protecting participants from manipulation, fraud, and other unlawful activities. This is our first, and hopefully not last, conference focused on derivatives-markets issues impacting the agricultural community in America's Heartland.

CONCLUSION

With the proper balance of sound policy, regulatory oversight and private sector innovation, new technologies and global trading will allow American markets to evolve in responsible ways, and continue to grow our economy and increase prosperity. This hearing is an important part of finding that balance. The CFTC remains grateful for the consistently thoughtful and bipartisan support of the Senate Committee on Agriculture, Nutrition, and Forestry. Thank you for inviting me to participate and I look forward to your questions.

Appendix A

CFTC Enforcement Actions Manipulation, Attempted Manipulation, False Reporting, Spoofing, and/or Manipulative or Deceptive Device	
FY 2018 (through 2/13/18)	11
FY 2017	12
FY 2016	4
FY 2015	11
FY 2014	6
FY 2013	5
FY 2012	2
FY 2011	4
Total	55

FY 2018 (Through Feb. 13, 2018)

1. In re Deutsche Bank Securities Inc., CFTC Docket No. 18-09 (CFTC filed Feb. 1, 2018); attempted manipulation; filed and settled; Press Release [7692-18](#).
2. CFTC v. Jitesh Thakkar and Edge Financial Technologies, Inc., No. 1:18-cv-00619 (N.D. Ill. filed Jan. 28, 2018); aiding and abetting spoofing and a manipulative and deceptive scheme; litigated; Press Release [7689-18](#).
3. CFTC v. Jiongsheng Zhao, No. 1:18-cv-00620 (N.D. Ill. filed Jan. 28, 2018); spoofing and a manipulative and deceptive scheme; litigated; Press Release [7688-18](#).
4. CFTC v. Krishna Mohan, No. 4:18-cv-00260 (S.D. Tex. filed Jan. 28, 2018); spoofing and a manipulative and deceptive scheme; litigated; Press Release [7687-18](#).
5. CFTC v. James Vorley and Cedric Chanu, No. 1:18-cv-00603 (N.D. Ill. filed Jan. 26, 2018); spoofing and a manipulative and deceptive scheme; litigated; Press Release [7686-18](#).
6. CFTC v. Andre Flotron, No. 3:18-cv-00158 (D. Conn. filed Jan. 26, 2018); spoofing and a manipulative and deceptive scheme; litigated; Press Release [7685-18](#).
7. In re HSBC Securities (USA) Inc., CFTC Docket No. 18-08 (CFTC filed Jan. 29, 2018); spoofing; filed and settled; Press Release [7684-18](#).
8. In re UBS AG, CFTC Docket No. 18-07 (CFTC filed Jan. 29, 2018); attempted manipulation and spoofing; filed and settled; Press Release [7683-18](#).
9. In re Deutsche Bank AG and Deutsche Bank Securities Inc., CFTC Docket No. 18-06 (CFTC filed Jan. 29, 2018); manipulation, attempted manipulation and spoofing; filed and settled; Press Release [7682-18](#).
10. In re Statoil ASA, CFTC Docket No. 18-04 (CFTC filed Nov. 14, 2017); attempted manipulation; file and settle; Press Release [7643-17](#).
11. In re Arab Global Commodities DMCC, CFTC Docket No. (CFTC filed Oct. 10, 2017); spoofing; filed and settled; Press Release [7627-17](#).

FY 2017

1. In re The Goldman Sachs Group, Inc. and Goldman , Sachs & Co. , CFTC Docket No. 17-03 (CFTC filed Dec. 21, 2016); attempted manipulation and false reporting; filed and settled; Press Release [7505-16](#).

2. In re Citigroup Global Markets Inc., CFTC Docket No. 17-06 (CFTC filed Jan. 19, 2017); spoofing; filed and settled; Press Release [7516-17](#).
3. In re The Royal Bank of Scotland plc, CFTC Docket No. 17-08 (CFTC filed Feb. 3, 2017); attempted manipulation; filed and settled; Press Release [7527-17](#).
4. In re Stephen Gola, CFTC Docket No. 17-12 (CFTC filed Mar. 30, 2017); spoofing; filed and settled; Press Release [7542-17](#).
5. In re Jonathan Brims, CFTC Docket No. 17-13 (CFTC filed Mar. 30, 2017); spoofing; filed and settled; Press Release [7542-17](#).
6. In re David Liew, CFTC Docket No. 17-14 (CFTC filed June 2, 2017); manipulation, attempted manipulation and spoofing; filed and settled; Press Release [7567-17](#).
7. In re McVean Trading & Investments, LLC, Charles Dow McVean, Sr., Michael J. Wharton and Samuel C. Gilmore, CFTC Docket No. 17-15 (CFTC filed June 21, 2017); manipulative device; filed and settled; Press Release [7574-17](#).
8. Jermy Lao, CFTC Non-Prosecution Agreement (June 28, 2017); Spoofing; Press Release [7581-17](#).
9. Daniel Liao (June 28, 2017), CFTC Non-Prosecution Agreement (June 28, 2017); spoofing; Press Release [7581-17](#).
10. Sholomo Salant (June 28, 2017), CFTC Non-Prosecution Agreement (June 28, 2017); spoofing; Press Release [7581-17](#).
11. In re Simon Posen, CFTC Docket No. 17-20 (CFTC filed July 26, 2017); spoofing; filed and settled; Press Release [7594-17](#).
12. In re The Bank of Tokyo-Mitsubishi UFJ, Ltd., CFTC Docket No. 17-21 (CFTC filed Aug. 7, 2017); spoofing; filed and settled; Press Release [7598-17](#).

FY 2016

1. CFTC v. Oystacher and 3Red Trading, Case No. 1:15-cv-09196 (N.D.Ill. Filed Oct. 19, 2015); spoofing; litigated; Press Release [7264-15](#)
2. In re Total Gas & Power North America, Inc. and Therese Tran, CFTC Docket No. 16-03 (CFTC filed Dec. 7, 2015); attempted manipulation; filed and settled; Press Release [7289-15](#).
3. In re Citibank, N.A., CFTC Docket No. 16-16 (Filed 5/25/2016); attempted manipulation, false reporting; filed and settled; Press Release [7371-16](#).
4. In re Citibank, N.A.; Citibank Japan Ltd and Citigroup Global Markets Japan Ltd., CFTC Docket No. 16-17 (CFTC filed May 25, 2016), attempted manipulation, false reporting, filed and settled; Press Release [7372-16](#).

FY 2015

1. CFTC v. Navinder Singh Sarao and Nav Sarao Futures Limited PLC, No. 1:15-cv-03398 (N.D. Ill. filed Apr. 17, 2015); manipulation, attempted manipulation, and spoofing; litigated; Press Release [7156-15](#).
2. CFTC v. Kraft Foods Group, Inc. and Mondelēz Global LLC, No. 1:15-cv-02881 (N.D. Ill. filed Apr. 1, 2015); manipulation and attempted manipulation; litigated; Press Release [7150-15](#).
3. CFTC v. Heet Khara and Nasim Salim, No. 15-cv-03497 (S.D.N.Y. filed May 5, 2015); spoofing; litigated; Press Release [7171-15](#).
4. In re Citibank N.A., CFTC Docket No. 15-03 (CFTC filed Nov. 11, 2014); attempted manipulation; filed and settled; Press Release [7056-14](#).
5. In re HSBC Bank plc, CFTC Docket No. 15-07 (CFTC filed Nov. 11, 2014); attempted manipulation; filed and settled; Press Release [7056-14](#).
6. In re JPMorgan Chase Bank N.A., CFTC Docket No. 15-04 (CFTC filed Nov. 11, 2014); attempted manipulation; filed and settled; Press Release [7056-14](#).

7. In re The Royal Bank of Scotland plc, CFTC Docket No. 15-05 (CFTC filed Nov. 11, 2014); attempted manipulation; filed and settled; Press Release [7056-14](#).
8. In re UBS AG, CFTC Docket No. 15-06 (CFTC filed Nov. 11, 2014); attempted manipulation; filed and settled; Press Release [7056-14](#).
9. In re Barclays Bank PLC, CFTC Docket No. 15-24 (CFTC filed May 20, 2015); attempted manipulation and false reporting; filed and settled; Press Release [7181-15](#).
10. In re Barclays PLC, Barclays Bank PLC, and Barclays Capital Inc., CFTC Docket No. 15-25 (CFTC filed May 20, 2015); attempted manipulation and false reporting; filed and settled; Press Release [7180-15](#).
11. In re Deutsche Bank AG, CFTC Docket No. 15-20 (CFTC filed Apr. 23, 2015); attempted manipulation and false reporting; simultaneously filed and settled; Press Release [7159-15](#).

FY 2014

1. In re Lloyds Banking Group plc and Lloyds Bank plc, CFTC Docket No. 14-18 (CFTC filed Jul. 28, 2014); manipulation, attempted manipulation and false reporting; filed and settled; Press Release [6966-14](#).
2. In re RP Martin Holdings Ltd. and Martin Brokers (UK) Limited, CFTC Docket No. 14-16 (CFTC filed May 15, 2014); manipulation, attempted manipulation and false reporting; filed and settled; Press Release [6930-14](#).
3. In re Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A., CFTC Docket No. 14-02 (CFTC filed Oct. 29, 2013); manipulation, attempted manipulation and false reporting; filed and settled; Press Release [6752-13](#).
4. In re JPMorgan Chase Bank, N.A., CFTC Docket No. 14-01 (CFTC filed Oct. 16, 2013); manipulative device; filed and settled; Press Release [6737-13](#).
5. CFTC v. Donald R. Wilson and DRW Investments, LLC, No. 13-cv-7884 (S.D.N.Y. filed Nov. 6, 2013); manipulation and attempted manipulation; litigated; Press Release [6766-13](#).
6. In re Daniel Shak and SHK Management LLC, CFTC Docket No. 14-03 (CFTC filed Nov. 25, 2013); attempted manipulation; filed and settled; Press Release [6781-13](#).

FY 2013

1. In re UBS AG and UBS Securities Japan Co., CFTC Docket No. 13-09 (CFTC filed Dec. 19, 2012); manipulation, attempted manipulation and false reporting; filed and settled; Press Release [6472-12](#).
2. In re The Royal Bank of Scotland plc and RBS Securities Japan Limited, CFTC Docket No. 13-14 (CFTC filed Feb. 6, 2013); manipulation, attempted manipulation and false reporting; filed and settled; Press Release [6510-13](#).
3. In re ICAP Europe Ltd., CFTC Docket No. 13-38 (CFTC filed Sep. 25, 2013); manipulation, attempted manipulation and false reporting; filed and settled; Press Release [6708-13](#).
4. In re Panther Energy Trading LLC and Michael J. Coscia, CFTC Docket No. 13-26 (CFTC filed Jul. 22, 2013); spoofing; filed and settled; Press Release [6649-13](#).
5. CFTC v. Eric Moncada, BES Capital LLC, and Serdika LLC, No. 12-cv-8791 (S.D.N.Y. filed Dec. 4, 2012); attempted manipulation, fictitious sales, non-competitive transactions; litigated; Press Release [6441-12](#).

FY 2012

1. In re Barclays PLC, Barclays Bank PLC and Barclays Capital Inc., CFTC Docket No. 12-25 (CFTC filed Jun. 27, 2012); attempted manipulation; simultaneously filed and settled; Press Release [6289-12](#).

2. CFTC v. Joseph F. Welsh, No. 12-cv-01873 (S.D.N.Y. filed Mar. 14, 2012); attempted manipulation; litigated; Press Release [6210-12](#).

FY 2011

1. CFTC v. Parnon Energy, Inc., Arcadia Petroleum Ltd., Arcadia Energy (Suisse) SA, James T. Dyer and Nicholas J. Wildgoose, No. 1:11-cv-03543-WHP (S.D.N.Y. filed May 24, 2011); manipulation and attempted manipulation; litigated; Press Release [6041-11](#).
2. In re Christopher L. Pia, CFTC Docket No. 11-17 (CFTC filed Jul. 25, 2011); attempted manipulation; filed and settled; Press Release [6079-11](#).
3. In re Ecoval Dairy Trade, Inc., CFTC Docket No. 11-16 (CFTC filed Jul. 19, 2011); attempted manipulation; filed and settled; Press Release [6075-11](#).
4. In re Bunge Global Markets, Inc., CFTC Docket No. 11-10 (CFTC filed Mar. 22, 2011); false reporting and entering orders to purchase or sell in the pre-opening trading sessions on Globex that Bunge had no intention of executing; filed and settled; Press Release [6007-11](#).

**DOCUMENTS SUBMITTED FOR THE
RECORD**

FEBRUARY 15, 2018

PAT ROBERTS, KANSAS
CHAIRMAN
 THAD COCHRAN, MISSISSIPPI
 MITCH MCCONNELL, KENTUCKY
 JOHN BOOZMAN, ARKANSAS
 JOHN HOOVER, NORTH DAKOTA
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 JOHN THUNE, SOUTH DAKOTA
 STEVE DAINES, MONTANA
 DAVID PERDUE, GEORGIA
 LUTHER STRANGE, ALABAMA

United States Senate

COMMITTEE ON
 AGRICULTURE, NUTRITION, AND FORESTRY
 WASHINGTON, DC 20510-6000
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 CHRIS VAN HOLLEN, MARYLAND

January 8, 2018

The Honorable J. Christopher Giancarlo
 Chairman
 United States Commodity Futures Trading Commission
 Three Lafayette Centre
 1155 21st Street, NW
 Washington, D.C. 20581

Dear Chairman Giancarlo:

We write to you today regarding the critical issue of clearinghouse oversight. Less than two years ago, following years of negotiations, the CFTC and the European Commission (EC) reached an agreement on cross-border clearinghouse oversight. The resulting framework adopted by the CFTC received unanimous and bipartisan support from all CFTC commissioners, including you. The agreement struck a good balance, providing strong cross-border oversight while giving firms the flexibility that is needed in the global derivatives marketplace.

In response to the United Kingdom's 2016 referendum to leave the European Union, also known as "Brexit," the EC has proposed a major overhaul of its financial services regulatory framework for derivatives clearinghouses. This proposed framework threatens the 2016 CFTC-EC agreement and would effectively empower European regulators with broad and duplicative supervisory authority over U.S. clearinghouses.

Failure to abide by the terms of the 2016 CFTC-EC agreement would call into question the credibility of the process that has been undertaken cooperatively by the CFTC and the EC in recent years, particularly given the agreement was finalized less than two years ago. We support your efforts to ensure a universal solution that recognizes the respective supervisory authorities of the CFTC and the EC, and encapsulates the principles set forth in the CFTC-EC agreement. Disjointed regulatory activities will serve no market, and will only cause undue stress.

In a recent speech, you stated that any unilateral change by European authorities would be a violation of trust and cooperation between the U.S. and Europe. We agree with that assessment. If the EC moves away from the 2016 CFTC-EC agreement, the CFTC should review the appropriateness of the exemptions and relief it has granted to foreign entities, including clearinghouses established in the European Union. The CFTC has existing authority to initiate such review, and we would support your efforts if you deem them appropriate and necessary.

We appreciate your work to foster open, transparent, competitive, and financially sound markets, and we thank you for your attention to this matter.

Sincerely,

Handwritten signature of Pat Roberts in black ink, written over a horizontal line.

Senator Pat Roberts, Chairman

Handwritten signature of Debbie Stabenow in black ink.

Senator Debbie Stabenow, Ranking Member

QUESTIONS AND ANSWERS

FEBRUARY 15, 2018

Senate Committee on Agriculture, Nutrition, and Forestry
“State of the CFTC: Examining Pending Rules, Cryptocurrency Regulation, and Cross-Border
Agreements”
February 15, 2018
Questions for the Record
Chairman J. Christopher Giancarlo

Chairman Pat Roberts

- 1. In your testimony you highlight the progress you and your staff are making to finalize a multitude of rules important to a number of derivative end-users. In particular, regarding de-minimis and position limits, when do you believe these rules will be completed in a way that provides adequate flexibility for end-users to properly hedge their commercial risk and maintain robust liquidity in the swaps market?**

Response: This year we will complete rules on de minimis levels for swap dealer registration. Staff of the CFTC’s Division of Swap Dealer and Intermediary Oversight (DSIO) have presented my fellow Commissioners and me with current swap dealing data and analysis and are now addressing follow up questions. I am hopeful that the data will enable the Commission to reach a consensus on an appropriate de minimis level. I know my fellow Commissioners share my determination to complete the rule this calendar year.

In addition, I am committed to moving forward with a final position limits rule. There are hundreds of comment letters on the topic and there are opinions on all sides of the issue, including by American agriculture producers.

Staff within the Division of Market Oversight (DMO) have begun work on revisions to the proposal that are responsive to the public comments. I have told them to ensure that American farmers, ranchers and producers can continue to use long standing hedging practices in our markets. I look forward to sitting down with the Division in the near future to discuss their progress.

In my view, any final position limits rulemaking should be done properly by a full Commission of five commissioners. It will ensure that a final position limits rule is indeed final and stands the test of time and changes in future administrations.

2. **As noted in your testimony, in 2015 the CFTC determined Bitcoin and other virtual currencies were commodities as defined under the Commodity Exchange Act. I agree with that determination. Yet, there have been a number of statements by other regulators indicating that these products can be considered both a commodity and a security. What is your opinion, and what is being done both by CFTC and other regulators to determine the appropriate jurisdiction?**

Response: The CFTC applies the Commodity Exchange Act (CEA) to products and offerings, and determined in 2015 that virtual currencies like Bitcoin are commodities. A recent decision out of the U.S. District Court for the Eastern District of New York (EDNY) upheld our jurisdiction over such commodities in an enforcement case, and is helpful in outlining application of the CEA to the virtual currency space. See *Commodity Futures Trading Comm'n v. McDonnell*, No. 1:18-cv-00361-JBW-RLM, slip op. (E.D.N.Y. Mar. 6, 2018) (mem.) In order to provide further clarity and certainty around application of the CEA, we have created a virtual currency and token working group under the direction of LabCFTC in an effort to further analyze application of the CEA to emerging products and offerings in the virtual space. We will also continue to engage with our peer regulators, including the SEC, in order to promote harmonization and consistency in the application of our respective rule sets.

As an additional point, it is important to note that the CFTC does not have authority to conduct regulatory oversight over spot virtual currency platforms or other cash commodities, including imposing registration requirements, transaction reporting, and compliance with personnel conduct standards, capital adequacy, trading system safeguards, cyber security examinations or other requirements. The CFTC does, however, have enforcement jurisdiction over fraud and manipulation in the spot market and both regulatory and enforcement jurisdiction under the CEA over derivatives on virtual currencies traded in the United States.

To this end, using our existing authorities, the agency has been particularly assertive with its enforcement authority over virtual currencies. It has formed an internal virtual currency enforcement task force to garner and deploy relevant expertise in this evolving asset class. The task force shares information and works cooperatively with counterparts at the SEC who have similar virtual currency expertise, with the goal of creating as much regulatory clarity and certainty as possible.

3. **I understand that there are thousands of trading platforms for trading virtual currencies. Can you explain these platforms, where they are located and how they come under the purview of the CFTC? And, should these entities be “more regulated” than they are today?**

Response: The internet, along with an abundance of available software, has enabled a proliferation of platforms for trading virtual currencies to develop globally. This raises real and significant concerns for the regulatory oversight of these trading venues. In fact, current law does not provide any U.S. Federal regulator with regulatory oversight authority over spot virtual currency platforms operating in the United States or abroad. Platforms in the U.S. are largely subject to state money transmitter rules.

Therefore, the CFTC believes it is critically important to continue the work of coordinating with other international, federal, and state regulators, including criminal authorities, in order to deter fraud and abuse and determine the best path forward for harmonized regulation of these markets. Specifically, we will: continue to assert legal authority over virtual currency derivatives in support of the CFTC’s anti-fraud and manipulation efforts, including in the underlying spot market; we will work to improve our market intelligence and monitoring capabilities; we will oversee underlying settlement reference rates through the gathering of trade and counterparty data, which will provide further regulatory and enforcement insights into those markets; we will continue to exercise our jurisdiction to enforce the law and prosecute fraud, abuse, manipulation or false solicitation in markets for virtual currency derivatives and underlying spot trading; and lastly, we will actively coordinate our approach to Bitcoin and other virtual currencies with other Federal regulators, including the Securities and Exchange Commission (SEC), Federal Bureau of Investigation (FBI), Justice Department and Financial Stability Oversight Council (FSOC). The CFTC will also continue to also coordinate with state entities, including state Attorneys General, in addition to working with the White House, Congress and other policy-makers to find the best approach to regulating these new markets.

4. **Virtual currency and virtual currency derivatives present significant opportunities. However, due to the nascent stage of the technology itself, there is considerable risk in this area. Opportunities for fraud and manipulation through traditional market abuses of pump and dump schemes, insider trading, false disclosure, Ponzi schemes and other forms of investor fraud and market manipulation all exist. Traditional market abuse detectors, such as advanced data analytics, have proved successful in mitigating fraud. How do you envision technologies like data analytics supporting the detection of virtual market abuses?**

Response: The Commission relies heavily on expertise in data and data analytics to fulfill its mission. Over the past year, the Commission has prioritized enhancing its data analytical capabilities. In particular, the Division of Enforcement has worked to fully integrate the use of data and sophisticated data analytics to police the derivatives markets, identify misconduct, and prosecute wrongdoers. As part of this effort, staff has developed—and is continuing to enhance—in-house innovative tools to analyze the data available to the Commission. This data, and the tools used to analyze it, will substantially increase our knowledge about market activity and market misconduct. This, in turn, will allow the Commission to identify misconduct of which it might otherwise have been unaware.

These data analytical tools are used to detect wrongdoers who have committed a wide variety of misconduct across the derivatives markets. For example, the Commission has already used sophisticated data analytics to investigate and prosecute spoofing and manipulation in the futures markets. In January 2018, the Commission filed eight such cases—charging six individuals and three financial institutions—with spoofing and manipulation based, in part, on some of these new sophisticated data analytics. The Department of Justice and the FBI charged the same individuals with related criminal charges in a parallel proceeding. Although these cases did not involve virtual currencies, the CFTC is vigorously policing the virtual currency markets for spoofing and manipulation, and it is working to apply the same type of sophisticated data analytics in those markets that it has used to detect misconduct in the more traditional markets. In addition, the Commission has used data analytics to track the flow of virtual currencies across the blockchain. This technology enables the CFTC to identify the flow of funds from one wrongdoer to another, and it allows the CFTC the best chance to identify misappropriated customer funds, which in turn increases the prospects that victims may enjoy some restitution. Finally, in its use of data analytics in the virtual currency markets, the CFTC is coordinating closely with other regulators to ensure the Agency is aware of and implementing the best data analytics techniques presently available. Moving forward the agency hopes to continue to upgrade and enhance its data analytical capabilities to keep up with markets that are rapidly changing.

5. Will the CFTC be following up to evaluate if the switch from Warehouse Receipts, to Shipping Certificates in the KC HRW Wheat contract has improved the opportunities for farmers to participate in the futures contract delivery process?

Response: The primary purpose of the KC HRW Wheat contract changes—introduction of Variable Storage Rate and conversion to shipping certificates—were to address a lack of convergence between cash market prices and futures prices. The CFTC will be monitoring the effectiveness of the changes in bringing together those prices. The CFTC believes that better convergence in the contract will remove the incentives for farmers to participate in the delivery process and increase the hedging performance of the contract.

6. **Mr. Chairman, I am interested in understanding how the CFTC can more closely coordinate with the SEC, perhaps even reduce some duplicative paperwork for the firms that currently must register with both agencies. I know you've had some discussions with your counterpart, Chairman Clayton at the SEC about this topic. Can you provide an update on those efforts?**

Response: The CFTC will continue working towards reducing regulatory burden when and where appropriate and is at work with the SEC to harmonize, as appropriate, many of our registration and reporting obligations under Title VII of the Dodd-Frank Act. Chairman Clayton and I are committed to reviewing our requirements to make them more efficient and less burdensome for markets participants. On February 27, I hosted a briefing with Chairman Clayton where the staffs jointly presented an update on these efforts.

With respect to over-the-counter swap markets, staff are exploring the practicability of information delivered to both regulators through an industry protocol process designed to comply with CFTC rules in 2013. This would result in a significant reduction in the documentation burden of end-user counterparties. With respect to recordkeeping requirements, staff of the agencies have identified minor amendments that would permit an SEC-registered firm to make and maintain records in the form required by CFTC rules so long as the records can be produced in the form required by the SEC when requested, resulting in a significant reduction to compliance burdens.

Outside of the swaps space, we are preliminarily exploring areas to harmonize regulation between the two agencies for investment advisers, private funds, and commodity pool operators. The Commission's Division of Swap Dealer and Intermediary Oversight has worked, and continues to work, in close collaboration with the SEC's Division of Investment Management to ensure that regulatory burden is minimized in relation to the market and customer protections afforded by regulatory oversight.

7. **We cannot afford for sensitive information to get hacked, disrupting commodities markets that our farmers and ranchers are depending on to work properly so they can manage their risks. With the recent hacks of the SEC's "Edgar" system and the alleged breach at the PCAOB, we know this is a real problem. Thus, can you provide the committee with an update on how the CFTC is protecting all the confidential information it is entrusted with as it oversees the financial markets. Specifically, I am interested in what you are doing to limit the information that you collect to ensure that you're gathering what you truly need and you are protecting it once you have it?**

Response: The CFTC is regularly evaluating the type and volume of data we require from our registrants to conduct our oversight as efficiently as possible. I recently instructed our Office of Data Technology (ODT) to work with the CFTC Divisions to identify the various types of Personally Identifiable Information we collect and identify opportunities to limit the information we collect to the minimum required by the mission.

The information collected is protected in accordance and in compliance with FISMA, OMB mandates and industry best practices. The FY 2017 FISMA Audit concluded that the CFTC is effectively managing risk in all five functions of the cybersecurity Framework (CSF). Our OIG's Annual FISMA report highlighted the continued progress and improvement made in the cybersecurity program. The OIG's annual FISMA assessment report stated: "CFTC's information security program generally meets standards prescribed by the Federal Information Security Modernization Act of 2014 (FISMA). Specifically, CFTC's information security program addresses each of the FISMA domain requirements and is deemed "Effective" when measured against the FISMA security Framework".

- 8. Mr. Chairman, I am pleased that you have been at the forefront of this Administration's efforts to review financial regulations, harmonize them and reduce outmoded or redundant regulations where possible. The Treasury Department issued a roadmap issuing several reports last year on streamlining regulation. Specifically, the Treasury Department's Asset Management and Insurance Report looked at firms that are dual registrants at both the CFTC and SEC and made some recommendations about how the SEC and CFTC should work together to define a single regulator for those entities. Can you give us your thoughts about these recommendations?**

Response: The CFTC takes very seriously the effects of outdated and redundant regulations on asset managers, and ultimately the customers that they serve. To that end, the CFTC is focused on updating and streamlining regulations that can have an immediate impact on participants in the marketplace.

When viewing the Treasury report, it is important to understand that the approach the CFTC has long taken in the asset manager space is a layered approach, and one that imposes additional regulations when the asset manager is significantly involved in the derivatives markets, and when these markets pose significant risks to the asset manager's customers.

For example, when an asset manager is involved solely in the derivatives markets, and to a de minimis degree, the CFTC obligations are minimal when that asset manager is also registered with the SEC, or advises only sophisticated clients. Even when the asset manager is significantly involved in the derivatives markets, but advises only sophisticated clients, the CFTC requires only minimal additional obligations that are specifically tailored to the risks posed by those derivatives. To that end, each regulator brings a deep understanding of their

respective markets to the table. When the application of this deep experience yields regulation that is added incrementally, and only as necessary to address risks that are not covered by another regulator, the Commission believes that the benefits of having two regulators with specific knowledge of widely varying issues and instruments far outweighs the benefits of a single regulator approach.

9. **Chairman Giancarlo, you were recently appointed as the head of an IOSCO taskforce on cybersecurity. This appears to be an opportunity to help encourage greater international harmonization and coordination on cybersecurity. Can you discuss with the Committee the taskforce's objectives and what you hope to accomplish?**

Response: Cyber-attacks pose one of the most significant threats to the integrity and stability of the financial markets. IOSCO established the Cyber Task Force (CTF) to enhance cybersecurity and counter these threats within IOSCO member jurisdictions. The CTF's objective is to provide a clear and effective floor of minimum cybersecurity practices for the capital markets sector in order to protect the financial markets. Because there is already robust private sector and standard-setting body guidance addressing how market participants should anticipate, deter, contain, and recover from cyber-attacks, the CTF will focus on reviewing how IOSCO member jurisdictions are using the current standards and determining if and where there may be gaps. As IOSCO members hail from 115 different jurisdictions, I view the work of the CTF as being the first truly global-scale effort to encourage a minimum standard for cyber security practices.

Ranking Member Debbie Stabenow

- 1. Chairman Giancarlo, I have appreciated your responses to my questions relating to bitcoin futures and cryptocurrencies in general, both during the hearing and in your written response to the letter from Chairman Roberts and me. I will continue to closely monitor issues surrounding the emerging cryptocurrency markets and would appreciate your ongoing input.**

You have described the CFTC's efforts to address issues surrounding emerging financial technologies ("FinTech"). These efforts have included the launch of the LabCFTC initiative, for which the CFTC recently signed a cooperation agreement with the United Kingdom's Financial Conduct Authority to collaborate and support each other's FinTech initiatives. However, the CFTC has continued to operate with inadequate funding, which has limited the resources that are available to this and other areas. If given proper funding, in what ways would the CFTC expand its LabCFTC initiative? Are there statutory impediments to expanding the initiative?

Response: With our limited resources, LabCFTC has made a commitment to work towards our main goal to help ensure that the agency has the tools and understanding to keep pace with technological innovation happening in our markets today.

As referenced in my testimony to the Committee, since its launch, LabCFTC has met with over 150 firms and organizations, including through 'office hour' sessions in New York, Chicago, Washington D.C., and earlier this year, the San Francisco Bay Area. Through these engagements, LabCFTC was recently able to recommend new virtual currency surveillance tools to our Enforcement division. I am pleased to report that our Enforcement team has in fact been able to avail itself of this new technology, and is now able to enhance certain surveillance and enforcement activities. In addition, late last year, LabCFTC published a FinTech primer on the topic of virtual currencies to help investors understand the pitfalls of this new product and will soon be releasing a request for public feedback regarding innovation competitions (which can include non-monetary awards) that the Commission would like to begin hosting in the near future. LabCFTC continues to work closely with domestic and international regulators on FinTech engagement models, and is developing internal educational resources to help inform our staff and policy.

In addition, the Commission has been proactive in working with international regulators on FinTech applications to harmonize approaches and to share best practices. As you noted, last month the CFTC and the UK's Financial Conduct Authority (FCA) signed an arrangement that commits the regulators to collaborating and supporting innovative firms through each other's financial technology (FinTech) initiatives – LabCFTC and FCA Innovate. This is the

first FinTech innovation arrangement for the CFTC with a non-US counterpart. We believe that by continuing to collaborate with the best-in-class FCA FinTech team, the CFTC can contribute to the growing awareness of the critical role of regulators in 21st century digital markets. We would like to expand our international efforts, to include establishing a regulatory working group, and increase participation in conferences, if resources were available.

Additional resources will allow the agency to scale up its promising and impactful work in this area, enhance its technology-focused human capital and expertise, expand internal educational and risk-assessment capabilities, and expedite efforts to facilitate and internalize emerging technologies that will make us a more effective and efficient regulator.

2. **You spoke during the hearing of the steps that the CFTC took prior to the launch of bitcoin futures on CFTC-regulated exchanges. And in your written testimony, you described additional future steps that would be taken by CFTC staff with respect to cryptocurrency product self-certifications. For instance, in the future, CFTC staff will require exchanges to describe how they have solicited input from interested parties prior to the launch of cryptocurrency products. Should this requirement be expanded to cover all products that pose new or novel risks to the markets and/or clearinghouses?**

Response: Under the Commodity Exchange Act (CEA) and Commission regulations, futures exchanges can self-certify new futures contracts on twenty-four hour notice prior to trading. There are limited grounds for the CFTC to “stay” self-certification such as filing a false statement in the certification. It is clear that Congress and prior Commissions deliberately designed the CFTC’s product self-certification framework to give futures exchanges the ability to quickly bring new products to the marketplace. Any regulatory standard for products listing to trade should respect the self-certification framework and allow for flexibility to work with the exchanges.

In the case of Bitcoin futures, the CFTC’s approach was balanced and took into account promoting responsible innovation and development that is consistent with its statutory mission.

The information access and risk management protocols established for the Bitcoin futures contracts reflects an appropriate and thoughtful balance of flexibility provided in the statute to the exchanges to self-certify new futures contracts, and for CFTC to monitor so that these contracts continue to be in compliance with the CEA’s core principles.

3. **The CFTC recently announced new enforcement actions and settlements against multiple large global banks. The settlements included language intended to waive the application of certain rules by the U.S. Securities and Exchange Commission (SEC), the so-called "Bad Actor" rules. These waivers reflected a departure from the CFTC's enforcement actions in recent years, when the CFTC refused to include such SEC**

waivers in its enforcement settlements. It would seem that the SEC would be better positioned to make determinations as to whether waivers of the SEC's own rules are appropriate. Why did the CFTC decide to change course in this regard?

Response: The CFTC's consideration of a request for relief from the "bad actor disqualification" is consistent with the relevant provision of Dodd Frank, as passed by Congress, and is provided for by the rules and guidance promulgated by the SEC in adopting its bad actor disqualification rules under Dodd Frank.

In promulgating its rules, as we understand it, the SEC made certain thoughtful policy decisions. First, there was an explicit determination that certain orders by the CFTC would trigger the disqualification. These are orders that address fraud, deceit or manipulation. Second, the SEC also determined that it would be appropriate to allow the CFTC to determine the impact of its own orders. Third, the SEC decided that if the CFTC determined disqualification was not necessary, the SEC would accept that determination and would not undertake a review of the waiver of the automatic disqualification. Finally, although the SEC has stated its intention to accept the CFTC's determination that disqualification is not appropriate, the SEC retains authority to bring a separate SEC action for disqualification should the SEC disagree with the CFTC's determination. (Disqualification in such circumstances would not be automatic, but would be a result of the separate SEC action.)

The factors considered by the CFTC in determining whether to provide advice against disqualification are based on those considered by the SEC in determining whether to grant waivers of disqualification, modified as appropriate to reflect the particular markets the CFTC regulates and its responsibilities under the CEA. The Commodity Exchange Act sets forth specific bases upon which the Commission may consider whether it should take any action affecting a registration, including revoking, conditioning, or restricting a registration. In determining whether any disqualification from SEC registration exemptions is appropriate, I believe these factors are also relevant.

I believe this to be a sound and pragmatic approach that ensures the regulator most knowledgeable about the particular facts at issue determines what the appropriate consequences of the misconduct should be.

I have directed staff that the Commission's consideration and resolutions of any such requests must be well grounded on the facts and circumstances of the particular case and we should be informed by any guidance provided by and actions taken by the SEC. I also wanted the basis of the Commission's determination to be transparent in the Commission's orders. That is how we have proceeded.

4. **During the hearing, a question was raised about the CFTC's pending rule that would implement capital requirements for swap dealers. This rule is a critical safeguard that was established by the Dodd-Frank Act, requiring that swap dealers have a sufficient financial cushion in order to avoid the catastrophic problems we encountered during the Great Recession. And yet, the rule remains unfinished.**

Will you commit to finalizing this rule, and if so, when will this critical safeguard to be in place?

Response: Section 731 of the Dodd-Frank Act requires that the Commission adopt rules establishing capital requirements for SDs and MSPs to help ensure their safety and soundness. On December 16, 2016 the CFTC published in the Federal Register a notice of proposed rulemaking on capital requirements of swap dealers (SDs) and major swap participants (MSPs.) I voted in favor of that proposal. As Chairman, I am committed to working towards completion of outstanding Dodd Frank rulemakings, such as the de minimis threshold, position limits rule, as well as the capital requirements of SD and MSPs.

5. **In today's derivatives markets, a significant amount of trading activity is automated, with computer programs and algorithms replacing the human traders in the open outcry pits of the past. Some agricultural producers have raised concerns about whether automated trading has had a negative impact on their ability to safely hedge their risks. Our nation's farmers and ranchers need fair and transparent derivatives markets that are free of abusive practices. In 2015, the CFTC proposed new rules on automated trading, but the rules have not yet been finalized. Will you commit to finalizing the rules, and if so, when will the final rules be in place?**

Response: Automated Trading Regulation (RegAT) was an initiative of my predecessor, Chairman Massad. My position was and continues to be that, while there were some good things in the proposal, there were other things that were unacceptable and perhaps unconstitutional, including that proprietary source code used in trading algorithms be accessible at any time to the CFTC and the Justice Department without a subpoena.

At heart, Reg AT is a registration scheme that would put hundreds if not thousands of automated traders under direct CFTC oversight and supervision, a role for which our agency has inadequate resources.

When I voted against the current proposal, I said that the relatively blunt act of registering automated traders does not begin to address the complex public policy considerations that arise from the digital revolution in modern markets. We should and must do better.

I am open to considering whether there are elements in Reg AT that could serve as the basis for a new and truly effective rule. I believe my fellow Commissioners have some good ideas. Our new Market Intelligence Branch and Office of Chief Economist will provide critical market analysis of the role of algorithmic trading. In February, the UK FCA and the Prudential Regulatory Authority published papers outlining their respective regulatory governance and compliance expectations in respect of algorithmic trading. There is a growing body of data and analysis for us to draw upon. Yet, the goal must be an effective rule, not just any rule.

6. **In your written testimony, you described the steps that have been taken to improve swap data reporting. This was a critical part of the Dodd-Frank Act and is necessary to avoid another financial crisis like the one we experienced in 2008. As you noted in your written testimony, the ability to monitor the counterparty credit risk of major financial institutions was among the most pressing needs after the crisis. I share your disappointment that this pressing need has not yet been addressed. While the global swap data reporting reform efforts continue over the coming years, what is the CFTC doing today to monitor swaps activity and protect our markets? What is the CFTC's ability to monitor the positions of individual swap dealers and the risks they pose to our financial system? How can the CFTC's capabilities be improved in this critical area?**

Response: Swap data reform efforts have afforded the CFTC with the opportunity to conduct crucial oversight of swap dealers and derivatives markets. While it is disappointing that monitoring counterparty credit risk of major financial institutions has not advanced as far as we would prefer, much progress has still been accomplished in our oversight of jurisdictional swaps markets. It is incumbent upon us to not forget that financial regulators previously had almost no insight into swap market activity. On the contrary, via swap data reporting, the CFTC now has transparency into these markets and understands the crucial aspects of who, what, when, where, and how much was trading in swaps. This information was unknown and impossible to discern prior to the Dodd-Frank Act, but the CFTC now better understands previously opaque swaps markets.

The CFTC recently created a consolidated data-mart that ingests information from all four separate Swap Data Repositories (SDRs) and standardizes that information as much as possible. This development increases efficiencies and allows staff to query jurisdictional swaps data in a central location rather than requiring staff to access all the SDRs and translate the data into a common format. Furthermore, Commission staff, SDRs, and reporting counterparties have worked diligently to improve the quality of swaps data and we have witnessed significant increases in completion of key elements reported for swap transactions. As a result of these improvements, CFTC staff can leverage the data much more readily.

Enforcement investigation and surveillance staff analyze swaps data to determine compliance with the market integrity, anti-fraud and reporting provisions of the Commodity Exchange Act and Commission regulations including, for example, evaluation as to whether trading activity potentially violates the anti-manipulation provisions. The CFTC actively monitors swaps activity and protects our markets by ensuring that swaps mandated for clearing are cleared appropriately and risk-managed effectively by central counterparties. The act of clearing swaps has lowered the volume of swaps where bilateral counterparty risk threatens the financial system and decreased a key factor underpinning the 2008 financial crisis. In addition, analysts utilize swaps data to identify build-up of substantial positions, concentrations of risks in particular segments of the market, significant exposure to specific counterparties in uncleared swaps and systemic risk carried through central counterparties. The CFTC's capabilities in this critical area will become more robust as our improvements to swap data continue to evolve. The ability to acquire resources with existing expertise in swaps trading and risk-management as well as improvements in technology would further increase the CFTC's abilities in this complex segment of the financial system.

Senator Thad Cochran

- 1. Chairman Giancarlo, as virtual currency trading continues to take off, we must establish strong safeguards to defend against fraudulent activity and improve data quality and governance. The CFTC has started prosecuting cases of cryptocurrency fraud, including cases of misappropriating funds, misleading customers, and other acts of fraud. Advanced data analytics has been successful in detecting fraud in traditional markets. How can similar analytic approaches be used to detect fraud in the new cryptocurrency markets, and what new analytic techniques may be needed for this emerging area?**

Response: The Commission relies heavily on expertise in data and data analytics to fulfill its mission. Over the past year, the Commission has prioritized enhancing its data analytical capabilities. In particular, the Division of Enforcement has worked to fully integrate the use of data and sophisticated data analytics to police the derivatives markets, identify misconduct, and prosecute wrongdoers. As part of this effort, staff has developed—and is continuing to enhance—in-house innovative tools to analyze the data available to the Commission. This data, and the tools used to analyze it, will substantially increase our knowledge about market activity and market misconduct. This, in turn, will allow the Commission to identify misconduct of which it might otherwise have been unaware.

These data analytical tools are used to detect wrongdoers who have committed a wide variety of misconduct across the derivatives markets. For example, the Commission has already used sophisticated data analytics to investigate and prosecute spoofing and manipulation in the futures markets. In January 2018, the Commission filed eight such cases—charging six individuals and three financial institutions—with spoofing and manipulation based, in part, on some of these new sophisticated data analytics. The Department of Justice and the FBI charged the same individuals with related criminal charges in a parallel proceeding.

Although these cases did not involve virtual currencies, the CFTC is vigorously policing the virtual currency markets for spoofing and manipulation, and it is working to apply the same type of sophisticated data analytics in those markets that it has used to detect misconduct in the more traditional markets. In addition, the Commission has used data analytics to track the flow of virtual currencies across the blockchain. This technology enables the CFTC to identify the flow of funds from one wrongdoer to another, and it allows the CFTC the best chance to identify misappropriated customer funds, which in turn increases the prospects that victims may enjoy some restitution. Finally, in its use of data analytics in the virtual currency markets, the CFTC is coordinating closely with other regulators to ensure the Agency is aware of and implementing the best data analytics techniques presently available. Moving forward the agency hopes to continue to upgrade and enhance its data analytical capabilities to keep up with markets that are rapidly changing.

Senator Michael Bennet

1. **Mr. Giancarlo, there's obviously been some volatility in stock and bond markets recently, including big price swings on the afternoon of Monday, February 5th.**
 - **Have you seen anything of concern in the markets you regulate – either that Monday or otherwise? Have there been extreme price fluctuations, fire sale dynamics, or pauses in trading activity?**
 - **If anything irregular has occurred, do you have an initial sense of why?**
 - **How do you generally plan to diagnose the causes of any irregular activity either from that Monday, other recent market volatility, or in the future and how do you plan to inform markets and the general public about your conclusions?**
 - **What are your biggest areas of concern when it comes systemic risks posed by markets you regulate?**

Response: CFTC staff continue to analyze data from the events of the week of February 5, and are working with staff from the SEC, Treasury, and FINRA. We have also been in

contact with the FRBNY and the NY Fed. In all such events staff analyze the data diligently, both to understand the market dynamics and to discern if there was any irregular activity. While every situation is different, the general protocol for identifying manipulative behavior is to start with the trading patterns and holding positions of individual traders. Where justified, CFTC staff make additional data requests from the trader to determine if any CFTC regulations were violated. In parallel, CFTC staff also analyze the overall market conditions and trading patterns to get a better insight into market dynamics and structure at a very granular level. In general, CFTC does not disclose its investigations or pending investigations to the public. We may, however, publish reports about specific market events and our analysis to better inform the public.

2. **I noticed the administration’s budget includes a proposal to fund the CFTC through fees, as has been proposed by Presidents of both parties for decades.**
- **I’m curious to hear you describe why fee funding is important to the operations of the CFTC and why you think we have not been able to get that done, despite it being in the policy mix since the 1980s.**

Response: I think it is important for the Commission to be adequately funded to fulfill its mission, and for FY 2019 the Budget Request of \$281.5 million is the right level. The Administration is proposing and the Fiscal Year 2019 budget request reflects that \$31.5 million of the \$281.5 million be derived from user fees. This is contingent upon enactment of authorizing legislation permitting the CFTC to collect and retain the fees.

We stand ready to assist Congress with technical assistance on any piece of legislation that they may pursue.

3. **I am pleased to see the dramatic increase in the percentage of transactions CFTC regulates that are being cleared today compared to 2007. When we worked on Dodd-Frank, we also wanted to ensure that the clearinghouses themselves don’t become a source of systemic risk.**
- **Can you talk about what you see as the role of orderly liquidation authority in Title II in dealing with the failure of a central counterparty?**
 - **Do you have a sense of how concentrated the clearing process has become?**
 - **What else can the CFTC do to ensure that the clearinghouses themselves don’t become sources of systemic risk? Would additional funding help?**

Response:

- **Can you talk about what you see as the role of orderly liquidation authority in Title II in dealing with the failure of a central counterparty?**

CFTC-regulated central counterparties (DCOs) have, consistent with the CEA and under the supervision of CFTC, strong and effective financial safeguards. These include margin collateral that has been sufficient to cover historical defaults, including during the 2008 crisis, and, for systemically important DCOs (SIDCOs), prefunded mutualized default funds that are designed to cover extraordinary losses of the two members creating the largest exposure in extreme but plausible market conditions, and recovery plans that include commitments of additional mutualized resources ranging from three to five and one-half times the prefunded amount as well as gains-based haircut arrangements that will allow the DCOs to address fully any uncovered default loss. They also have arrangements for replenishment, by non-defaulting members, of mutualized resources that are consumed.

Nonetheless, there remains a small possibility that a SIDCO's recovery arrangements could be unsuccessful, either because of non-default losses that exceed the SIDCO's resources, or because members lose confidence in the SIDCO and refuse to participate in replenishment.

The orderly liquidation authority in Title II, sometimes referred to as "resolution," is necessary to address such an extraordinary tail event. It provides a means, subject to approval of a variety of agencies (Federal Reserve, FDIC and Treasury) for the FDIC to step in as receiver for a SIDCO whose members have lost confidence, in order to avoid a disorderly stop to the SIDCO's critical functions. By fostering the continuous operation of critical financial infrastructure, the use of orderly liquidation authority for a failing SIDCO would bring stability to the U.S. financial system.

- **Do you have a sense of how concentrated the clearing process has become?**

The CFTC has the data and tools necessary to evaluate how concentrated the clearing process has become. The CFTC has recently begun a comprehensive four part review of clearing concentration. The first part of this review will evaluate concentration as measured by initial margin (that is, collateral). The second, third and fourth parts of the review will evaluate clearing concentration by shares of, respectively, variation margin (that is, day-to-day gains and losses), open interest (that is, the extent of the positions in each contract that each member clears) and clearers of large futures and swaps customer accounts. At the completion of this review the CFTC will have a comprehensive understanding of the concentration issues present in the clearing process.

The CFTC has a very good understanding as to how concentrated clearing has become, as measured by initial margin. However, in order to provide a more comprehensive opinion on

concentration in the clearing process the CFTC would like to wait until this four part review is completed.

The CFTC has recently begun posting summary cleared initial margin information on its website. Included in the graphs is a chart showing the percentage of customer margin held by the five largest parent firms. As of February 28, 2018, the five largest parent firms held 56% of total customer initial margin.

One of the concerns related to a concentrated market is the ability of customers to port to a new clearing firm in the event of a firm defaulting or exiting the clearing business. The CFTC has recently surveyed several large firms regarding porting related issues, including with relation to the impact of bank capital standards on firms' ability to take on additional customer positions from a failing FCM (the "Supplementary Leverage Ratio problem). The CFTC is also discussing porting related matters with CCPs. The CFTC is in the process of preparing a comprehensive report on what it has learned.

- **What else can the CFTC do to ensure that the clearinghouses themselves don't become sources of systemic risk? Would additional funding help?**

There are three components of a risk surveillance program sufficient in scope to evaluate clearinghouse systemic risk; 1) data, 2) tools and applications and 3) risk reviews/Supervisory Stress Tests.

With respect to data, the CFTC is a leader in data driven financial regulation. Daily, the CFTC receives thousands of futures and swaps related firm and trader level positions. For several of these positions the CFTC also receives firm and trader margin requirements. With respect to tools and applications, the CFTC has developed internally and purchased tools and applications which allow for daily stress testing and other risk surveillance activities related to firm and trader level positions. Stress test results are compared to firm and trader margin requirements. New stress testing tools are needed to allow the Commission to incorporate additional data sets, for uncleared positions, into the risk surveillance program, as well as enabling a comparison of margin models in order to analyze differences and ensure appropriate coverage.

Lastly, with respect to risk reviews/Supervisory Stress Tests, the CFTC conducts proactive trader and firm level risk reviews on an ongoing basis. The reviews are risk-based, and given additional resources, we would be able to conduct additional reviews. All though all aspects of the risk surveillance program are related to clearinghouse risk, the CFTC's Supervisory Stress Testing program directly evaluates systemic risk. In 2016, the CFTC conducted a Credit Supervisory Stress Test across multiple clearinghouses. In 2017, the CFTC conducted

a Liquidity Supervisory Stress Test across multiple clearinghouses. The CFTC is close to finalizing its 2018 Supervisory Stress Test efforts.

Additional funding would greatly help in the evaluation of systemic risk across clearinghouses. First, the CFTC is the process of setting a goal to conduct more frequent Supervisory Stress Tests, which we believe would be very informative to the public. The group responsible for moving this forward is currently staffed with two FTEs. These same two FTEs are also responsible for all other CFTC risk surveillance data and application efforts. Growing the data and technology group of the risk surveillance area would ensure the CFTC would be able to meet its formative goal of more frequent Supervisory Stress Tests.

Moreover, DCO supervision is a critical component of mitigating the risk that each DCO, and in particular the two systemically important DCOs, pose to the financial system. Additional funding would allow more frequent, in-depth examinations of DCOs, particularly in areas such as risk management and cybersecurity. Currently the CFTC only has sufficient staff to examine the two systemically important DCOs on an annual basis and with limited scope. Other DCOs are examined less frequently, based on a risk-based assessment, with priority given to those where areas of highest concern have been identified. The FY 2019 Budget requests an additional seven staff. This would enable the Commission to increase the number of DCO examinations conducted annually, and continue with these planned DCO examinations without diverting staff to engage in DCO disruptions. A disruption is an unplanned cybersecurity/system safeguard event that requires immediate attention and currently requires staff to be pulled from ongoing examinations to cover the compliance events. The Commissions covers as many as 80 events a year.

- 4. Can you elaborate more on the CFTC's efforts to ensure that our foreign competitors are working to adopt comparable rules on clearing and transparency?**
- **Is there any evidence to indicate that these swap transactions have migrated to less-regulated markets?**
 - **Are there any specific regions or countries that are of particular concern to the CFTC?**

Response: Commissioners, as well as staff, have and will continue to engage in discussions with foreign regulatory authorities and market participants in order to appropriately monitor market activity and developments, identify emerging issues, address cross-border derivatives matters, and promote regulatory harmonization as other jurisdictions develop their derivatives regulatory regimes. The Commission intends to continue engaging in these discussions as it implements the Dodd-Frank Act requirements and other relevant subsequent legislative measures.

The Commission also has a leading role in several global initiatives of multilateral standard setting bodies such as the International Organization of Securities Commissions (IOSCO), the Committee on Payments and Market Infrastructures-IOSCO (CPMI-IOSCO), and the Financial Stability Board (FSB). Through active participation in such bodies Commission staff is able to monitor and have direct input into the development of global regulatory standards affecting our markets.

With respect to clearing and transparency, in December 2013, the Commission published a final rule titled, *Derivatives Clearing Organizations and International Standards*, in which it adopted additional requirements for compliance with the derivatives clearing organization (DCO) core principles set forth in the Commodity Exchange Act (CEA) for systemically important DCOs (SIDCOs) and DCOs that elect to opt-in to the SIDCO regulatory requirements. In this regard, a DCO may elect to opt in to a SIDCO regulatory regime in order to mitigate the additional costs to its bank customers as a result of the Basel Committee on Banking Supervision's 2012 publication of "Capital Requirements for Bank Exposures to Central Counterparties". The additional requirements are consistent with the Principles for Financial Market Infrastructures (PFMIs) published by the Committee on Payment and Settlement Systems and the board of the International Organization of Securities Commissions. Among one of the requirements is that SIDCOs and subpart C DCOs must adhere to additional disclosure requirements.

In October 2016, the Commission adopted a final rule expanding the clearing requirement for interest rate swaps denominated in certain currencies and having certain termination dates. In this regard, the Commission harmonized its swap clearing requirement with clearing mandates promulgated in other jurisdictions.

In addition, within the last two years, the Commission has obtained equivalence decisions from the European Commission and provided comparability determinations with respect to European requirements in regard to central clearing counterparties (CCPs), trading venues, and margin. These achievements helped avert potential market disruption and fragmentation. The mutual recognition of comparable requirements with the European Union bolsters the regulatory foundation set by the Commission's rules while setting a substantive precedent and creating incentives for other jurisdictions to align their standards with those of two of the leading market jurisdictions.

- 5. I know you've made it a point of emphasis to make sure CFTC will stay up to speed with advances in technology.**

- **Can you describe those efforts and the proper role of CFTC, including the regulations on automated trading?**

Response: Technology is impacting trading, markets and the entire financial landscape with far ranging implications for capital formation and risk transfer. These technologies include machine learning and artificial intelligence, algorithm-based trading, data analytics, “smart” 3 contracts valuing themselves and calculating payments in real-time and distributed ledger technologies, which over time may come to challenge traditional market infrastructure. It is no surprise that these technologies are having an equally transformative impact on U.S. derivatives markets.

LabCFTC is the focal point of the CFTC’s efforts to ensure that we can keep pace with changes in our markets, and proactively identify emerging regulatory opportunities, challenges, and risks. We have situated LabCFTC within the CFTC’s Office of the General Counsel. It allows LabCFTC to leverage the expertise of the CFTC’s legal team to manage the interface between technological innovation, regulatory modernization, and existing rules and regulations.

LabCFTC has hosted innovators across the nation, ranging from startups to established financial institutions to leading technology companies. These outreach efforts are designed to make the CFTC more accessible to FinTech innovators, and to serve as a platform for informing the Commission’s understanding of emerging technologies. The information gathered in these meetings also provides important insights to CFTC staff on market innovations that may influence policy development. In fact, through its engagement with—and study of—innovative technologies, LabCFTC was recently able to recommend new virtual currency surveillance tools to our Enforcement division. Our Enforcement team has been able to avail itself of this new technology, and is now able to enhance certain surveillance and enforcement activities. This important development helps underscore the value of LabCFTC, and its effort to ensure that we are prepared to be a 21st century digital regulator.

In addition to LabCFTC’s efforts undertaken domestically, the Commission has been proactive in working with international regulators on FinTech applications to harmonize approaches and to share best practices. Last month the CFTC and the UK’s Financial Conduct Authority (FCA) signed an arrangement that commits the regulators to collaborating and supporting innovative firms through each other’s financial technology (FinTech) initiatives – LabCFTC and FCA Innovate. This is the first FinTech innovation arrangement for the CFTC with a non-US counterpart. We believe that by collaborating with the best-in-class FCA FinTech team, the CFTC can contribute to the growing awareness of the critical role of regulators in 21st century digital markets.

On November 4, 2016, the Commission approved a supplemental notice of proposed rulemaking for Regulation AT (“Supplemental NPRM”). The Supplemental NPRM modifies certain rules proposed in the Commission’s December 2015 notice of proposed rulemaking for Regulation AT. We introduced a 90-day comment period which closed on January 24, 2017. Based on the broad range of topics addressed in the Supplemental NPRM and the number of questions posed, we are extending the comment period for the Supplemental NPRM through May 1, 2017. We expect to have a final rule by December 2018.

6. What do you think is the effect of high-frequency trading on farmers, ranchers, and other end-users?

- **Are derivatives markets currently working well for them? Are they better or worse than before Dodd-Frank?**

Response: Our view is that effective and strong markets require a healthy mix of commercial and non-commercial traders. In this regard high-frequency traders serve an important function in the market by providing liquidity on both sides of the market. While commercial traders bring deep knowledge of the physical markets to futures trading, high-frequency traders are effective at quickly arbitraging differences across related markets; together they make the markets healthier than they would be otherwise. Overall, markets are serving the needs of end-users effectively. CFTC monitors all markets closely to ensure that the contracts are well functioning. Where we see a potential issue with a contract design, we engage with the industry and the exchanges to make sure that the exchange is responsive to the needs of the industry.

While futures markets are generally working well today, the CFTC continues to focus its regulatory attention on ensuring that markets continue to provide effective hedging and price discovery for all end-users.

Senator Bob Casey

1. **Mr. Giancarlo, I understand the CFTC made a margin recommendation with regards to the listing of bitcoin futures of over 30%, which the actual margin exceeded, once listed. Has CFTC ever recommended such a high margin for a futures product? If so, what?**

Response: To the best of my knowledge, before bitcoin futures, the Commission had never recommended a specific margin level for a product.

2. **Part of the purpose of the futures market is to facilitate price discovery of a product, do you believe there is sufficient volume of the bitcoin exchange to lend that function and to ensure the market is not at risk of manipulation?**

Response: In determining whether a futures contract is readily susceptible to manipulation, Commission staff examines the design of the contract to ensure that it conforms to prevailing cash market practice. For cash-settled bitcoin futures contracts, like those listed by the CME and Cboe Futures, Commission staff analyzes the inputs and the methodology used to calculate the final settlement price index.

Although trading in the underlying bitcoin exchanges does not exhibit high degrees of liquidity, Commission staff believe that the methodologies employed by the futures markets—e.g. including prices from multiple platforms, averaging prices over extended time periods, using volume weighting, eliminating outliers, and relying on prices determined during periods of concentrated liquidity—are sufficient to provide reliable final settlement prices that are reflective of the underlying market.

Moreover, the exchanges have entered into information sharing agreements with the underlying markets that should provide visibility to those markets so that any attempt to distort or manipulate the bitcoin prices should be detectable. The Commission staff believes that such visibility creates a disincentive to attempt distortion or manipulate the bitcoin price.

Finally, the exchanges have agreed to conduct enhanced surveillance of the bitcoin markets and to regularly coordinate with and report to the Commission staff on their surveillance efforts and findings.

- 3. According to public comments, there have been numerous instances of activity in the RINs market which would not be acceptable in regulated markets, including violation of bids or offers, spoofing and setting artificial price floors. All of which could lead to artificially high RIN prices. Please discuss what steps you have taken to work with the EPA to assess potential RIN market manipulation? Do you have access to all the data you need to make assessments? What types of data are you reviewing?**

Response: The CFTC does not regulate the RINs market. In May of 2017, at the request of the Environmental Protection Agency (EPA) the CFTC reviewed and analyzed data to assist the EPA in conducting oversight of the RINs market.

Under the provisions of a memorandum of understanding ("MOU") signed on March 15, 2016 between the CFTC and the EPA, the EPA requested that the CFTC, review data provided by EPA on the RINS ethanol markets for evidence of attempted price manipulation. The work was limited in scope and, as agreed upon by EPA and CFTC staffs, focused on RFA's concern that ethanol RIN prices may have been subject to price manipulation from May through July 2016.

DMO staff's review and analysis focused on identifying market participants who bought and sold RINs in a manner that was consistent with a scheme to manipulate prices higher over a limited period of time. In addition, DMO staff's analysis was strictly limited to the data provided by EPA; no additional data collection was conducted by the CFTC. Given the CFTC's lack of expertise with the RIN's market and data, EPA staff provided guidance to DMO staff throughout the process, including the explanation of potential anomalies and limitations in the EPA's data.

Surveillance staff's review was narrow in scope and focused solely on identifying market participants who bought and sold relevant D6 RINs in a manner that was consistent with a scheme to manipulate prices higher over a limited time period.

Subject to the limited scope of the analysis and the constraints posed by the EPA's data, DMO staff did not find evidence of market manipulation in the ethanol RIN market related to increasing prices between May 1 and July 31, 2016

Results of the analysis were shared with EPA, which included information about limitations of the analysis due to limited data. The CFTC has no ongoing further supervisory or oversight role in the RINs market.

4. Do you believe the data collected by the EPA contains sufficient information about the RIN market to make timely assessments of potential manipulation? If not, what additional data needs to be collected?

Response: In the agency's response to the EPA, we noted limitations in the data. Specifically, the EPA's data lacks a time stamp on the reported transactions, which constrains a price manipulation analysis because it does not allow for the proper sequencing of transactions on a specific date. Thus, DMO staff's analysis was constrained because it could not be certain if a market participant's buying at incrementally higher prices on a specific day actually occurred prior to its selling at a higher price on the same day.

Subject to the limited scope of the analysis and the constraints posed by the EPA's data, as specified more fully in the enclosed document, DMO staff did not find evidence of market manipulation in the ethanol RIN market related to increasing prices between May 1 and July 31, 2016.

5. **If market manipulation is discovered within the RIN market, is it your view that the CFTC has sufficient authority to take action and regulate the market?**

Response: The CFTC does not have regulatory authority by statute over the RIN markets. The agency's regulatory oversight is limited to the derivatives markets where RIN futures contracts are traded.

